

C-O-N-F-I-D-E-N-T-I-A-L

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CIVIL ACTION NO. 96CV-5903

WILLIAM BARNES, et al.,
Plaintiffs,

vs.

THE AMERICAN TOBACCO COMPANY,
INC., et al.,
Defendants.

Deposition of
W. KIP VISCUSI

in

VIDEOTAPED DEPOSITION OF W. KIP

VISCUSI, a witness called on behalf of the
Plaintiffs, taken pursuant to the Federal Rules of
Civil Procedure, before Lisa A. Miller, Registered
Professional Reporter and Notary Public in and for
the Commonwealth of Massachusetts, at the Office
of National Economic Research Associates, One Main
Street, Cambridge, Massachusetts, on Wednesday,
September 24, 1997, commencing at 1:52 p.m.

DORIS O. WONG ASSOCIATES, Inc.

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Also present:

Laura D. Stone, videographer
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* * * *

I N D E X

WITNESS:DIRECT CROSS

W. Kip Viscusi

(By Mr. Becnel)

9

* * *

E X H I B I T S

EX. NO.PAGE

V-1 Copy of book entitled Smoking Making the Risky Decision

5

V-2 Binder entitled "PA Smoke Backup Book for Expert Report of Professor W. Kip Viscusi

6

V-3 Binder entitled "PA Smoke Backup Book #1 for Deposition of Professor W. Kip Viscusi

6

V-4 Binder entitled "PA Smoke Backup Book #2 for Deposition of Professor W. Kip Viscusi

6

V-5 One-page letter from Mike Szymanczyk with an attached document entitled "Drug Free Workplace Act: Policy Guidelines"

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P R O C E E D I N G S

THE VIDEOGRAPHER: We are going on the record, and the time is 1:52. This is the videotaped deposition of Dr. W. Kip Viscusi taken by the plaintiff in the matter of Williams Barnes, et al. versus The American Tobacco Company, Inc., et al. under the jurisdiction of the United States District Court for the Eastern District of Pennsylvania, Civil Action No. 96CV-5903. The deposition is being held at National Economic Research Association, One Main Street, Cambridge, Massachusetts on September 24, 1997.

My name is Laura Stone. I am the video specialist. The court reporter is Lisa Miller for Doris Wong Associates with offices at 50 Franklin Street, Boston, Massachusetts. Counsel will now state their appearance for the record, and the court reporter will swear in the witness.

MR. BECNEL: Daniel E. Becnel, Jr., representing the Barnes interest.

MR. VERNON: Keith Vernon representing Barnes.

MR. WEIL: Jeff Weil representing the Philip Morris defendant.

1 THE WITNESS: W. Kip Viscusi, the
2 deponent.

3 MR. WEIL: One housekeeping matter,
4 which we discussed off the record and will now
5 continue on the record, that's the production of
6 documents which Dr. Viscusi reviewed and used in
7 preparation of his report and in support of his
8 opinion that he's giving in this case.

9 There was what could be interpreted
10 as a request for those types of documents, and I
11 am now producing to Mr. Becnel and Mr. Vernon a
12 set of documents which Dr. Viscusi has reviewed
13 and used in preparation of his report and the
14 support of his opinion in this case. One of them
15 is a Xerox copy of his book called Smoking Making
16 the Risky Decision.

17 MR. BECNEL: Let me identify
18 those. Ms. Reporter, can you give me one of your
19 stickums, and I'll just mark them as we go.

20 Okay. We'll mark it as V-1.

21 (Document marked as Exhibit V-1
22 for identification)

23 MR. WEIL: Next are three binders.
24 These are binders which we would want back but can
25 make complete copies of for you, and you can use

1 them during the course of this deposition. You
2 can take them with you tonight if you want, but we
3 only have one set of them so far. You can tell me
4 what you want at the end of the deposition and
5 we'll make copies.

6 MR. BECNEL: Let's give each one of
7 them a separate number. We'll call the first one
8 "PA Smoke".

9 MR. WEIL: The first one is called
10 "Backup Book For Expert Report."

11 MR. BECNEL: Okay. And I'll mark
12 that as V-2.

13 (Document marked as Exhibit V-2
14 for identification)

15 MR. WEIL: All right. The next one
16 is called "Backup Book #1."

17 MR. BECNEL: I'll call that V-3.
18 (Document marked as Exhibit V-3
19 for identification)

20 MR. WEIL: And then "Backup Book
21 #2."

22 MR. BECNEL: And that will be V-4.
23 (Document marked as Exhibit V-4
24 for identification)

25 MR. BECNEL: And I will ask you,

1 counsel, to make us at least one copy, and we will
2 just give the court reporter the original.

3 MR. WEIL: Fine.

4 MR. BECNEL: And while we're
5 housekeeping, if we would have a clean copy of his
6 CV, we could attach that.

7 THE WITNESS: Isn't that part of
8 one of these?

9 MR. WEIL: You know what that is?
10 That is part of, and you can take that out if you
11 want --

12 MR. BECNEL: Okay. That's fine.

13 MR. WEIL: V-2. It's the first
14 section of V-2. And there is one other set of
15 documents which I just learned about this morning
16 that Dr. Viscusi looked at in connection with
17 preparing his report, and I haven't even seen a
18 copy of that yet. I will tell you what that is
19 and get a copy for you as soon as we can. It has
20 to do with a 1997 Audit & Survey report that was
21 done on risk perception. You can ask Dr. Viscusi
22 more about it during the deposition, but I'd just
23 alert you to the fact that that's another set of
24 documents which he's looked at and used to
25 formulate his report. I haven't seen it yet. I

1 don't have a copy of it. As soon as I get a copy,
2 I'll send it along to you.

3 MR. BECNEL: It will be done prior
4 to the close of his deposition?

5 MR. WEIL: Do you think we can get
6 it overnight or not?

7 THE WITNESS: If I can find a copy
8 in my office tonight, then I can bring it here,
9 and they can photocopy it. I'm not sure I have
10 with it -- there's one table I prepared using that
11 data. I'm not sure -- I'm optimistic that I can
12 find the one copy.

13 MR. BECNEL: Okay. We would like
14 to try to get it at least by the close of business
15 today so we can look at it tonight and try to --

16 THE WITNESS: You can't get it
17 today, because that means I would have to leave
18 the deposition now and look for it.

19 MR. BECNEL: Okay. We'll address
20 that as we get to it.

21 W. KIP VISCUSI
22 a witness called for examination by counsel for
23 the Plaintiffs, being first duly sworn, was
24 examined and testified as follows:
25

DIRECT EXAMINATION

BY MR. BECNEL:

Q. Dr. Viscusi, can you tell us when you were first retained in the Barnes case.

A. I believe it was this spring or summer.

I'm not sure exactly when, but somewhere several months ago.

Q. How were you retained?

A. I met with Mr. Weil, and at that time he indicated that if this case went forward, that he wanted to use me as an expert.

Q. Did he write you a letter?

A. No. I have no correspondence from him, I don't think.

Q. Did he give you a telephone call?

A. Originally there was a phone call to set up an in-person meeting in Boston where I met with him and two other attorneys.

Q. All right. The attorneys you met with -- I don't want to know what you talked about, but who were the attorneys you met with?

A. One was Mike Doluisio -- I'm not sure of the spelling -- from Dechert Price & Rhoads and a woman, and I'm not sure what firm she was with or what her name was.

1 Q. Do you know who they represented or
2 purported to represent?

3 A. The defense in this case, but I'm not sure
4 how it broke out among the different lawyers.

5 Q. So you don't know whether it was
6 just lawyers for Philip Morris or RJR or maybe
7 combinations?

8 A. I don't know.

9 Q. All right. Did you execute any
10 contractual agreement with those law firms or
11 those tobacco companies that retained you?

12 A. No, there was no formal contract. There
13 was agreement -- I told them what my hourly rate
14 was if they wanted me to work on the case.

15 Q. And what was your hourly rate?

16 A. It's \$500 an hour.

17 Q. And there's no written agreement of
18 any kind, no memorandum or letter, outlining the
19 payment schedule and the billable rate?

20 A. None that I sent them or they sent me.

21 Q. Have you sent any bills up to this
22 point concerning your consultation in this case?

23 A. I have not personally submitted bills, but
24 NERA, where we are now, did submit a bill for my
25 work on this expert report.

1 Q. All right. Who keeps the time and
2 charges on the work that you do in this case?

3 A. I keep the time and I relay it to NERA, and
4 NERA has been submitting the bills.

5 Q. Do you keep memorandums of billable
6 time in some diary?

7 A. No. What I do is traditionally I have a
8 sheet, so if I do two hours, I write two hours,
9 four hours, but I don't keep like a time log of my
10 things.

11 Q. How much time up to this point
12 prior to this deposition starting today have you
13 spent in consultation, in review of documents,
14 writing reports, consulting with lawyers in this
15 case?

16 A. My approximate guess is about 26 hours,
17 somewhere in that range.

18 Q. Those 26 hours began on what day?

19 A. I don't know. It was before I submitted
20 this report. The very first time would be my
21 meeting with them when they came to my office. I
22 didn't charge them for any time before that
23 meeting, but I'm not sure what date that was.

24 Q. Are you computer literate?

25 A. I do E-mail, but I do not do any of my own

1 typing. I can type.

2 Q. How are your records maintained in
3 terms of your billable hours?

4 A. I write down -- literally, I write down on
5 a sheet of paper I'll keep tabs, eight hours then
6 another four hours, two hours, so if I'm on the
7 plane reading documents, when I get back I'll
8 write down two hours if it was two hours. So
9 that's basically the way I do it. I don't have
10 any computerized system or anything.

11 Q. Have you ever seen a copy of your
12 bill in terms of memorializing dates and times and
13 hours spent on each aspect of the case?

14 A. I sent an E-mail to NERA indicating the
15 number of hours I'd worked up through August on
16 the case, and that simply indicated that I'd
17 worked ten hours, but I didn't indicate so many
18 hours was for the meeting with them, so many hours
19 was for preparing my expert report.

20 Q. So you have no written record that
21 describes the tasks performed, the date performed
22 and how many hours?

23 A. That's true of all my consulting. I just
24 don't do that.

25 Q. Have you ever been an expert

1 witness before, sir?

2 A. Yes.

3 Q. Have you been an expert witness in
4 the federal courts before?

5 A. Yes.

6 Q. Have you ever submitted time and
7 expense reports in a court case before, sir?

8 A. Yes.

9 Q. And how do you itemize your time
10 and expense reports for the court?

11 A. Well, I never get reimbursed by the court.
12 I get reimbursed by lawyers who are in the
13 courtroom, and I would -- for example, today I
14 would submit a bill, one bill for the deposition
15 and a total time charge for the other meeting
16 time.

17 Q. Did you produce a copy or in the
18 documents produced, thus far a copy of your bill
19 that was billed to the various lawyers and/or
20 tobacco companies that you've worked for?

21 MR. WEIL: That's not been produced
22 because I don't believe it's been requested.

23 MR. BECNEL: I think we asked for
24 his entire file related to this action, including
25 charts, graphs, documentary, tangible, anything.

1 I think that would include that, his time and
2 charges.

3 A. I didn't send the bill. It's not in my
4 file.

5 Q. You work for a company that sent
6 the bill?

7 A. I told them what to submit.

8 Q. Do you work for a company that
9 submitted the bill?

10 A. No. I'm a special consultant to them. I'm
11 not sure what that makes me, but they're not my
12 main employer.

13 Q. All right. Well, did the tobacco
14 interest hire you as an expert or hire this
15 company that submitted the bill for you?

16 MR. WEIL: Objection to the form.

17 Q. You can answer.

18 A. I don't know what the arrangement was. I
19 have no formal contract from them. I agreed to do
20 work for Dechert Price & Rhoads through NERA.

21 Q. Well, what is your relationship
22 with NERA?

23 A. I'm a special consultant.

24 Q. Are you paid by the hour?

25 A. By the hour for jobs done.

1 Q. Do you work with them on contracts
2 or grants that they get?

3 A. Yes.

4 Q. Did they do work for the tobacco
5 interest?

6 MR. WEIL: Objection to the form.

7 A. They worked on this case. This is the only
8 tobacco-related case I've worked with NERA on.

9 Q. Do you know if this company has
10 contracts or consulting arrangements with the
11 tobacco interests?

12 MR. WEIL: Objection to the form.

13 A. I don't know. I know they've done work
14 before, but I don't know if they have any
15 continuing contract.

16 Q. What do you mean you know they've
17 done work before, sir?

18 A. One of the people at NERA testified in the
19 public hearings held by OSHA on environmental
20 tobacco smoke, so I know at least on one other
21 occasion, they've done tobacco-related work.

22 Q. So they have been consultants for
23 the tobacco industry previous to your being
24 retained as a special consultant?

25 A. I'm not sure if they worked for an

1 industry. I believe they were just consulting to
2 a law firm, so I don't think it was any direct
3 relationship to a company, but once again, this is
4 not my contract. I don't know how they set it up.

5 Q. As a special consultant, why do you
6 have to submit your bills through this company?

7 A. I don't have to do it. Sometimes I've
8 submitted my bills directly. The advantage of
9 this is that it cuts down on my paperwork, but
10 other than that, there's no reason why I have to
11 do it. I ~~get~~ paid the same amount regardless.

12 Q. Well, in this case, sir, you told
13 me you've spent roughly 26 hours, which would
14 round out at your hourly rate to about \$13,000.
15 Do you get that \$13,000?

16 A. I get that and nothing more, so I get
17 exactly that and I get no extra bonuses or any
18 other dividends.

19 Q. So what does the National Economic
20 Research Associates get for submitting bills for
21 you? Why do they do that?

22 MR. WEIL: If you know.

23 A. I don't know. They don't get anything.
24 There's no profit out of this for them.

25 Q. Why would they allow you to use

1 their facilities and to do your paperwork and
2 collect the money for you in a consulting contract
3 that you have that they get no money for?

4 MR. WEIL: Objection. Calls for
5 speculation. Lack of foundation.

6 Q. You can answer.

7 A. Why am I working with NERA people in terms
8 of Xeroxing binders and whatever, so NERA staff
9 people assisted in terms of preparing some of my
10 materials

11 Q. What staff people assisted in
12 preparing your materials from NERA?

13 A. Dr. Albert Nichols.

14 Q. And who is he?

15 A. He's a NERA economist. I'm not sure what
16 his official internal title is, but he's a Ph.D.
17 and former Harvard professor.

18 Q. Does he do work for the tobacco
19 industry?

20 A. I don't know if he's ever done work for the
21 industry.

22 Q. Does he do work for law firms
23 representing the tobacco industry?

24 MR. WEIL: Objection. Lack of
25 foundation. Speculative.

1 A. I only know of one instance where he may
2 have done work for them.

3 Q. When was that, sir?

4 A. That was the OSHA hearings on environmental
5 tobacco smoke.

6 Q. Was he under contract to do work
7 for those OSHA hearings to The Tobacco Institute,
8 tobacco industry or law firms representing tobacco
9 interests?

10 MR. WEIL: Objection. Lack of
11 foundation. Calls for speculation.

12 A. I have no idea.

13 Q. Do you own stock, sir?

14 A. No.

15 Q. You own no stock in the tobacco
16 companies?

17 A. No stock in any company unless TIA-CREF, my
18 university pension plan, invested in them. So
19 CREF owns stock in lots of companies on behalf of
20 university professors throughout the country. I -
21 don't know what their portfolio is.

22 Q. When the funds were remitted to you
23 from the tobacco interests or the law firm, did
24 you get the check directly?

25 A. Yes.

1 Q. And how much have you been paid to
2 date by either the law firm or the tobacco
3 interests?

4 MR. WEIL: Objection to the form.

5 A. I don't know whether they've paid anything,
6 but NERA paid me \$5,000.

7 Q. Why would NERA be paying you for a
8 private consultation as an expert witness, sir?

9 A. They submitted the bill for me, so they
10 funnel -- the checks are funneled through NERA,
11 and they reimburse me.

12 Q. So NERA received the check for your
13 work and then, in turn, issued you a check?

14 A. I don't know that they received a check.
15 All I know is I got a check.

16 Q. Was the check from NERA?

17 A. Yes.

18 Q. So NERA took the check that was
19 paid supposedly to you as an expert witness,
20 deposited it into their account and then they gave
21 you either all or a portion of those bills?

22 MR. WEIL: Objection. Misstates
23 his testimony. Calls for speculation. Lack of
24 foundation.

25 Q. You can answer.

1 A. I don't know what they did. I just know
2 that I got a check from them for \$5,000.

3 Q. Well, who will give and issue to
4 you your tax reporting requirements for this
5 consultation work?

6 A. Who will cut me a 1099 form or whatever it
7 is?

8 Q. That's correct.

9 A. NERA would.

10 Q. So you do not give the tobacco
11 interests or the law firms that you're working for
12 your social security number or employee -- or
13 employer's I.D. number directly; is that correct?

14 A. They haven't asked me for it. I don't care
15 which way it goes. It doesn't matter to me.

16 Q. So the people that are hired in
17 this case that are getting paid is the National
18 Economic Research Associates; is that correct?

19 MR. WEIL: Objection. Misstates
20 his testimony. He already said he's been paid.

21 Q. Is that correct, sir?

22 A. I've been paid. The checks are probably
23 written to NERA then paid to me.

24 Q. Do they take any percentage of the
25 money from your billable time, whether it's

1 administrative percentages or overhead percentages
2 from your billable time, sir?

3 A. I don't know that they do. I've never been
4 told that they do.

5 MR. BECNEL: Counsel, we're going
6 to request the information relating to the
7 payment, the hours billed in this case, and we'll
8 ask you to please comply with that request under
9 our document request.

10 MR. WEIL: I'll take that request
11 under advisement.

12 Q. Do you know if NERA has a financial
13 interest in the outcome of this litigation, sir?

14 A. No, I have never heard that that's the
15 case.

16 Q. Do you know if they have any grants
17 ongoing with tobacco interests?

18 MR. WEIL: Objection to the form.

19 A. No, I'm not aware of any grants either.

20 Q. Do you know if their consultants
21 and associates and employees that work with the
22 National Economic Research Associates have stock
23 in the tobacco companies?

24 MR. WEIL: Objection. Lack of
25 foundation. Calls for speculation.

1 A. I'm not aware of anybody who owns stock in
2 tobacco companies.

3 Q. How many employees are at NERA?
4 MR. WEIL: Objection. Lack of
5 foundation.

6 A. I don't know that number either. There's
7 under 100 here. I don't know their national
8 total.

9 Q. Well, how many states are they
10 located in?

11 MR. WEIL: Objection. Lack of
12 foundation.

13 A. I don't know that either. I know they're
14 in New York and California, but I don't know where
15 else they might have offices.

16 (At this point, Eileen M. Johnson
17 entered the deposition room)

18 Q. Well, how did you become associated
19 with them, sir?

20 A. Two of the NERA consultants are Harvard
21 professors or former Harvard professors whom I
22 knew, two more are MIT professors whom I know and
23 another person who works for NERA is a former
24 professor colleague of mine, so it was a natural
25 kind of thing in terms of a working relationship

1 to want to work with people you have high
2 professional regard for.

3 Q. Do any of those people whom you
4 have high regard for represent tobacco interests
5 or law firms representing tobacco interests?

6 A. I don't know any more than I've already
7 told you. One of those people was Dr. Nichols,
8 whom we've already discussed.

9 Q. Now, once you were retained, were
10 you called at this office or at your home?

11 A. I was called at my Harvard Law School
12 office.

13 Q. And you use the Harvard Law School
14 to do consulting work?

15 MR. WEIL: Objection. Vague and
16 ambiguous.

17 A. I'm not sure what that question means.

18 Q. Well, are you allowed under your
19 teaching contract with Harvard to do private
20 outside consulting work?

21 A. Yes.

22 Q. And are you allowed to use Harvard
23 facilities to do phone calls, Faxes and the like?

24 A. Yes, I am.

25 Q. And how is that accounted, sir?

1 A. It's not. I just do it. I'm not sure what
2 you mean "How is that accounted?"

3 Q. Well, if you make a long distance
4 phone call for your private consultation work,
5 whether through yourself or through NERA, is
6 Harvard billed for that, or do you pay the charges
7 for those incurred costs?

8 A. I have phone cards I use for personal
9 calls, and I also have every FedEx bill -- I
10 reimburse Harvard Law School for all Federal
11 Express charges.

12 Q. So any phone records that you would
13 have in consultation with either NERA in your work
14 in the tobacco case or with the law firms, you
15 would have used your phone card for, wouldn't you?

16 A. Well, it's free to call NERA.

17 Q. Is it free to call the law firms
18 that have retained you?

19 A. No, it's not free to call the law firms.

20 Q. Do you bill for those services and-
21 phone calls where you initiate the call?

22 A. If I'm returning a phone call from people
23 whom I don't know, I would call them generally on
24 my regular phone line.

25 Q. Who is your calling card with, sir?

1 A. I have two calling cards, one with MCI, one
2 with AT&T.

3 Q. And these two calling cards would
4 be the two cards that you would use to charge your
5 phone records?

6 A. These are the two, yes.

7 Q. Are they both listed under your
8 name?

9 A. Yes, they are.

10 Q. And that would reflect any phone
11 calls on those charge cards that were made --
12 initiated by you to tobacco interests, law firms
13 and the like in this case?

14 A. No. It could be on my home phone as well.

15 Q. How do you bill for time and
16 charges on your bills to the tobacco interests for
17 phone calls you made and you charged to your
18 accounts, whether home, office, calling cards?

19 MR. WEIL: Objection to the form
20 and asked and answered. I think he's already
21 covered this billing issue.

22 A. I only bill for time. I don't bill for
23 Federal Express charges or other incidental
24 expenses.

25 Q. So at in no time do you have any

1 charges for long distance calls, postage, Federal
2 Express, Faxes and the like; is that correct?

3 A. Only if there are a lot of Federal Express
4 charges. I've had none in this case, but for
5 other clients for whom I have a large Federal
6 Express bill, they would all get pooled together.
7 I have not billed them yet, but I'm keeping tabs
8 on what I've incurred over the past year.

9 Q. And how do you generate and keep
10 tabs on your billing for Faxes, Federal Express
11 and the like?

12 MR. WEIL: For work in this case?

13 MR. BECNEL: For work in this
14 case.

15 A. There have been no Faxes. There has been
16 no Federal Express, to the best of my knowledge.

17 Q. What is your Fax number, sir?

18 A. I have a Fax machine at home that just goes
19 into my home number. My two Fax numbers --

20 MR. WEIL: Wait a minute. What is
21 the relevance of this?

22 MR. BECNEL: It's very relevant,
23 counsel, because I intend to issue subpoenas for
24 all of his phone records.

25 MR. WEIL: Okay. I instruct him

1 not to answer that question.

2 MR. BECNEL: You instruct him not
3 to answer, and I think this is perfect discovery,
4 and I'm telling you the purpose for it, to check
5 his credibility as to what he's doing.

6 MR. WEIL: Okay. You may apply to
7 the court.

8 MR. BECNEL: And we'll apply to the
9 court for sanctions related to instructing the
10 witness not to answer the question.

11 Q. You received monthly bills on your
12 phone calling cards?

13 A. Yes.

14 Q. Monthly bills on your home phone,
15 Fax machine and home number?

16 A. Yes.

17 Q. Now, you've told us that, as an
18 expert witness, once retained, you have no
19 correspondence whatsoever in this case? Is that
20 what your testimony is, sir?

21 A. That's true.

22 Q. How did you receive the documents
23 that you reviewed?

24 A. I'm not sure I've reviewed any documents.

25 Q. You've not reviewed anything prior

1 to rendering your opinion?

2 A. Nothing that they've provided to me. I
3 can't think of anything.

4 MR. WEIL: I think there's some
5 confusion. I think you think he's referring to
6 just documents from the law firm. I think he's
7 making his question broader to include any
8 documents that you've looked at.

9 Q. What have the defendants provided
10 to you in this case to review?

11 MR. WEIL: You mean the defendants,
12 okay.

13 MR. BECNEL: The defendants.

14 MR. WEIL: You're limiting it to
15 them. Then I'm sorry. You were answering it
16 correctly. I'm sorry.

17 MR. BECNEL: I was going to correct
18 it. You know --

19 MR. WEIL: I thought there was some
20 confusion.

21 Q. Go ahead.

22 A. Nothing.

23 Q. What have the law firms that have
24 retained you or you have consulted with provided
25 to you?

1 A. Nothing.

2 Q. What instructions did you receive
3 as to how you were to go about doing the work that
4 they wanted you to do?

5 A. They indicated that they needed a written
6 expert report.

7 Q. And how did you know what the
8 written expert report they needed was?

9 A. I knew what the general topic of the court
10 case was based on their meeting with me.

11 Q. All right. You've not reviewed the
12 pleadings in this case?

13 A. No.

14 Q. So you don't know what this lawsuit
15 is about

16 MR. WEIL: Objection.

17 Q. -- other than what lawyers told
18 you?

19 A. I am simply here to discuss my research,
20 and they can determine how it's relevant.

21 Q. That's unresponsive to my question,
22 sir.

23 A. It's what I'm here to do.

24 Q. I didn't ask you that question.
25 You don't know what this lawsuit is about?

1 A. I didn't say that.

2 Q. Well, how do you know what this
3 lawsuit is about?

4 A. My discussion with the attorneys.

5 Q. So everything you know about this
6 lawsuit was orally told to you by the defense
7 interests in this case; is that correct

8 MS. JOHNSON: Form of the
9 question.

10 A. All lawsuit-specific information as opposed
11 to knowledge about smoking in general, yes.

12 Q. So the defendants provided you with
13 the information concerning what the nature of the
14 report they were looking for and what the facts in
15 the case were; is that true?

16 MR. WEIL: Objection.

17 A. No, they did not indicate the nature of the
18 report they were looking for at all. They just
19 indicated the character of the facts, and I
20 indicated to them "Here is the knowledge I can
21 bring to bear that I believe might be pertinent."

22 Q. Do you know if the facts that they
23 gave to you were true and correct statements of
24 this lawsuit?

25 A. No, I don't know. I just know this is what

1 they said.

2 Q. So you assume that what they told
3 you was true and accurate, and based on that,
4 that's on which premise you built your expert
5 report; is that true?

6 MR. WEIL: Objection. That's not
7 the premise for his expert report.

8 MR. BECNEL: Improper objection,
9 counsel. It's a talking objection, and it's not
10 covered by the rules.

11 MR. WEIL: It misstates his
12 testimony

13 MR. BECNEL: And I think it's an
14 improper objection, and I'd ask you to utilize the
15 proper objections and make noises like lawyers.

16 A. This is not an advocacy statement. This is
17 a report that simply indicates pertinent
18 literature that economists, including myself, have
19 found. I believe that answers the question you
20 asked a minute or two ago.

21 Q. Well, do you know how many people
22 are involved in this lawsuit, sir, as a potential
23 class?

24 A. No.

25 Q. Do you know the definition of the

1 class in this lawsuit?

2 A. No, but presumably it's related to smoking.

3 Q. Do you know, sir, any information
4 concerning the class representatives in this
5 lawsuit?

6 MR. WEIL: Any information?

7 MR. BECNEL: Any information on the
8 class representatives in this lawsuit.

9 MR. WEIL: Objection. Vague and
10 ambiguous

11 A. Just that we have two lawyers here, and
12 there's another lawyer, Mr. Mellon, who didn't
13 come today.

14 Q. Do you know what a class
15 representative is?

16 A. Presumably that would be the lawyer who is
17 representing the class.

18 Q. That's what the lawyers told you?

19 A. No. I'm trying to infer based on the
20 English language what that would be.

21 Q. Have you ever been involved in a
22 case previous to this, sir, involving a class
23 action?

24 A. Probably.

25 Q. Well, tell me what other case.

1 A. DES might have been a class action.

2 Q. That was in New York?

3 A. New York.

4 Q. Cybil Shainwald, Leroy Hurish?

5 A. I don't know any names.

6 Q. What was the outcome of that
7 litigation?

8 MR. WEIL: Objection.

9 Q. What was the outcome of that
10 litigation?

11 A. I believe they settled out of court.

12 Q. Well, was there a verdict?

13 MR. WEIL: What is the relevance of
14 this?

15 Q. Was there a verdict, sir?

16 A. I don't know. I was doing market share
17 liability. As far as I know, that topic never
18 went to trial.

19 Q. You were representing the
20 defendants?

21 A. One of them, yes.

22 Q. What judge was that case before?

23 A. I don't know.

24 Q. Was it a federal judge in New York?

25 A. It was New York. I assume it's a federal

1 judge.

2 Q. Judge Weinstein?

3 A. He seems to like doing these sorts of
4 things. It could have been him.

5 Q. Well, do you know?

6 A. I don't know.

7 Q. Did you testify in that case, sir?

8 A. In deposition, but not in court.

9 Q. Do you know if you were admitted as
10 an expert in that case by deposition?

11 MR. WEIL: Objection.

12 A. I don't know what that means. I'm an
13 economist. I just don't know what that question
14 means.

15 Q. Do you know what the people who are
16 saying that they represent the entire class of the
17 smoking population of Pennsylvania who claim that
18 they're addicted to smoking and wanting medical
19 monitoring -- do you know what the facts on those
20 individuals are, any information concerning the
21 facts on those individuals, meaning their work
22 history, their health history, their economic
23 condition and the like? Do you know anything
24 about that?

25 MR. WEIL: Are you limiting it to

1 the six named plaintiffs, the class?

2 MR. BECNEL: Yes, the six named
3 plaintiffs.

4 A. I don't recall any information. It may
5 have been discussed, but it's not something I
6 remember.

7 Q. So you don't know their names, do
8 you?

9 A. No.

10 Q. You don't know their social
11 history?

12 A. No.

13 Q. You don't know their economic
14 history?

15 A. No.

16 Q. You don't know their medical
17 conditions?

18 A. No.

19 Q. You have not seen any of their
20 medical reports?

21 A. No.

22 Q. Nor have you seen their
23 depositions?

24 A. No.

25 Q. Nor do you have even a synopsis of

1 what those individuals said when they were
2 deposed?

3 A. No, I don't have anything.

4 Q. You don't know the name -- what
5 they alleged in the lawsuit in which they filed in
6 this case on behalf of the class?

7 A. I haven't read anything that they've
8 submitted.

9 Q. Have you ever undergone a hearing
10 before a court in state or federal court
11 concerning a Daubert challenge, sir?

12 A. No.

13 Q. Do you know what Daubert means, a
14 Daubert hearing?

15 A. Yes.

16 Q. How do you know, sir?

17 A. Just general reading. I'm familiar with, I
18 guess, the Daubert rule. To the best of my
19 knowledge, it's never come up.

20 Q. Up to this point, any case you've
21 ever been involved in, it's never come up?

22 A. Nobody's ever told me it's come up.

23 Q. How many times have you testified
24 in court, sir?

25 A. I don't know. Maybe 15.

1 Q. And in each case that you testified
2 in court, what was the field of expertise that you
3 were tendered as?

4 A. An economist.

5 Q. And what was the type of testimony
6 you could aid and assist the court with? What
7 sort of information do you use to give to the
8 court in those fifteen cases?

9 MR. WEIL: I assume you're speaking
10 in general terms?

11 MR. BECNEL: In general terms.

12 A. Fifteen is just a ballpark estimate. It
13 would be economic damages, which I've done, and
14 I've also done hazard warnings testimony in court
15 on whether it's an effective warning. I've also
16 testified on pension plan or stock options and
17 issues like that.

18 Q. Can you tell me, sir, how hazardous
19 chemicals warnings is inside the field of
20 economics.

21 MS. JOHNSON: Objection to the form
22 of the question.

23 A. I study how people make choices and
24 decisions under uncertainty, and hazard sources
25 are one source of information that could affect

1 these choices.

2 Q. And you're referring to hazard
3 warnings involving chemicals?

4 A. I've done hazard warnings for chemicals,
5 prescription drugs, shoe polish. I've either
6 written hazard warnings or tested hazard warnings
7 for a lot of products.

8 Q. Are you familiar with the Dow
9 Chemical Exposure Index, sir?

10 A. No

11 Q. Have you ever heard of it?

12 A. No

13 Q. Are you familiar with MSDS sheets?

14 A. Yes.

15 Q. What is an MSDS sheet?

16 A. It's a material safety data sheet.

17 Q. Do you know which company first
18 developed MSDS sheets in the '40s and '50s in the
19 United States?

20 A. No. It wouldn't surprise me if it was
21 duPont, but I don't know.

22 Q. Were you aware that it was Dow,
23 sir?

24 A. I don't know who did it.

25 Q. Are you familiar with Richard

1 Lewis's Chemical Hazard Index?

2 A. No, I'm not.

3 Q. Are you familiar with Sax's the
4 Dangerous Properties of Chemicals?

5 A. No.

6 Q. Are you familiar with AAR on the
7 hazardous transportation in railroads of
8 chemicals?

9 A. No.

10 Q. Are you familiar with any of the
11 hazardous manuals dealing with marine
12 transportation of materials?

13 A. I've reviewed some of them in connection
14 with one case, but I didn't write any of those
15 manuals, and that's not a main area of my
16 expertise.

17 Q. How about DOTs, manuals dealing
18 with the transportation and warnings of hazardous
19 materials?

20 A. I don't do transportation hazards.

21 Q. Do you have any background in
22 chemistry whatsoever?

23 A. College chemistry.

24 Q. You've never been offered as a
25 chemist?

1 A. Never.

2 Q. You've never been offered as a Haz.
3 Mat. person?

4 A. No.

5 Q. Are you familiar with Plunkett's,
6 the book dealing with exposure to chemicals in
7 industry?

8 A. No.

9 Q. Are you familiar with the NIOSH
10 manuals?

11 A. Yes. In fact, I was called in to decide
12 whether to issue the OSHA Hazard Communication
13 Standard, so I have some involvement in this area.

14 Q. What is your field of expertise in
15 hazardous warnings?

16 A. It's the analysis of how people process
17 risk information and make decisions based on the
18 risk information they receive, so it goes to
19 designing effective warnings and from issues
20 pertaining to information overload, label clutter-
21 and related topics.

22 Q. And how does that relate to your
23 field of study, sir?

24 A. It's how people make choices under
25 uncertainty and how people form their risk beliefs

1 based on information that they receive.

2 Q. Was there any course material that
3 you took dealing with that in economics?

4 A. Yes.

5 Q. What courses?

6 A. Statistical decision theory, probability.

7 A lot of the regulation courses, certainly the
8 courses I teach now, that's exactly what they do,
9 but much of my work has been spent developing that
10 as an economics field.

11 Q. I have noticed on your CV, sir, a
12 number of cases that you have allegedly testified
13 in, and you said you're recalling these from
14 memory; is that correct?

15 A. Yes. These are not really from memory, but
16 these were the ones that my secretary could dig
17 out of my files at Duke when I was still there,
18 and I tried to add some recently, but these are
19 the ones I could lay my hands on.

20 Q. And can you tell me in terms of the
21 testimony you've given if you mainly represent or
22 consult with law firms that represent defendants?

23 A. I consult with roughly an equal number of
24 both, but I've been deposed and I've testified
25 more for plaintiffs than for defense.

1 Q. All right. And what kind of
2 plaintiffs' case have you testified in, sir?

3 A. Numerous personal injury, medical
4 malpractice cases.

5 Q. Involving how much a person lost in
6 income or what the future medical would be?

7 A. I've done that. I've also done numerous
8 hazardous warnings cases. I've testified on the
9 constitutionality of damages caps for plaintiffs,
10 so it's a range of issues.

11 Q. I notice that most of the cases you
12 have given us involve companies. Are those where
13 companies are involved on the plaintiffs' side or
14 on the defense side?

15 A. Most of them just involved individuals.

16 Q. Have you ever been a court
17 appointed expert previous?

18 A. No.

19 Q. So no courts in this country have
20 ever asked you to be an expert for the court, not
21 for either side but for the court?

22 A. No.

23 Q. Have you -- you've given me also
24 some information concerning your testimony before
25 congressional hearings; is that correct?

1 A. That's correct.

2 Q. Did any of the congressional
3 testimony that you gave involve smoking or smoking
4 related issues?

5 A. No. Only to the extent that product
6 liability pertains to smoking generally.

7 Q. Have you written any books
8 concerning product liability?

9 A. Yes.

10 Q. How many?

11 A. One book exclusively dealing with product
12 liability.

13 Q. What was the theme of your product
14 liability book?

15 A. It's called Reforming Products liability,
16 so it was a detailed empirical analysis of the
17 liability crisis.

18 Q. What is the liability crisis, sir?

19 A. From 1984 to 1986 there was an explosion in
20 liability costs and insurance costs in the United
21 States. Insurance premiums tripled in a three-
22 year period, and it had significant effects on
23 society in terms of depressing innovation in new
24 products, shutting down important lines of
25 research in the medical area with respect to

1 lifesaving products.

2 Q. So you took a position in your book
3 that plaintiffs, because of the liability crisis,
4 were responsible for the liability crisis?

5 MR. WEIL: Objection.

6 A. No. I would never blame plaintiffs. Some
7 of my best clients are plaintiffs in some sense.
8 The point of the book was to indicate that the
9 costs have gone substantially up. In the case of
10 damages, I wasn't blaming plaintiffs at all, and
11 for the level of damages, the main theme of the
12 book is the reason why damages have gone up is
13 medical price inflation, so that's not an anti-
14 plaintiff view at all.

15 In terms of the role of liability
16 in terms of when liability kicks in, one area
17 where I did have reservations was with respect to
18 toxic torts since there was no deterrence role
19 that would be served for opposing liability on
20 firms long after they've taken the actions that
21 are at issue in the case in situations where when
22 they took the action they were not aware of the
23 liability that would be applied.

24 Q. Are you referring to asbestos?

25 A. That would be the classic example.

1 Q. What other examples are there?

2 Dioxin, 245T, 245D, Agent Orange?

3 A. In the case of Agent Orange, I think people
4 knew it was risky, even at the time of the Vietnam
5 war, so I don't think that would fit the bill
6 because there was substantial knowledge of the
7 risks.

8 Q. How about something like the swine
9 flu vaccine?

10 A. All vaccines create potential problems of
11 adverse reactions, and Congress has dealt with
12 that by eventually passing a bill that would set
13 up compensation, an administrative compensation
14 mechanism for such victims.

15 Q. Did you study the swine flu
16 inoculation program where the manufacturer said,
17 "Hey, we're not going to produce this," but the
18 government says, "Produce it and we'll assume the
19 liability"?

20 A. I have not studied that program at all
21 other than what I read in the paper. I did not
22 write about it.

23 Q. Breast implants, are you involved
24 in that?

25 A. No.

1 Q. Plaintiff or defendant, neither
2 side?

3 A. I've not billed any hours, and I've not
4 signed up with any party to work on it.

5 Q. When you say you've not billed any,
6 have you been consulted?

7 A. I was called by one company, and they asked
8 me if I wanted to work for them, and I said no.

9 Q. Which company was that?

10 A. I don't know. It was some company in
11 California.

12 Q. McGahn?

13 A. No

14 Q. Bristol Myers Squibb?

15 A. No

16 Q. Replicon?

17 A. No. They were not a big player. I
18 wouldn't know who. You know, it was several years
19 ago back when I was at Duke.

20 Q. Are you familiar with Dr. Gorgeaidè
21 from Duke?

22 A. I don't know him.

23 Q. One of the people that invented
24 breast implants.

25 A. No, I don't know him.

1 Q. You've worked at a number of
2 universities that accept a great deal of grant
3 money from business and industry, don't you?

4 MR. WEIL: Objection.

5 A. I don't know if Harvard Law School, for
6 example, accepts any grant money from business. I
7 don't know how their funding works.

8 Q. You're a professor now, are you
9 not?

10 A. Yes.

11 Q. What is your professorship called?

12 A. John F. Cogan, Jr., professor of law and
13 economics

14 Q. And what is that?

15 A. John F. Cogan, Jr., is a Boston lawyer who
16 made a close to \$3 million donation for the
17 professorship.

18 Q. You've also been professor for the
19 Olin Company, is that correct, under some grant?

20 MR. WEIL: I'm sorry. Professor
21 for the Olin Company?

22 MR. BECNEL: Olin. He had a
23 professorship for Olin.

24 A. The visiting professorship was called the
25 Olin professor, but it's not the Olin Company.

1 It's the Olin Foundation.

2 Q. And that is a chemical company?

3 A. It was John M. Olin, so I'm not sure where
4 the -- what company it was, but it's the Olin
5 Foundation.

6 Q. Do you have a law degree, sir?

7 A. No.

8 Q. Have you studied law?

9 A. I've never been a student in a law school.
10 I've taken a course from a Harvard Law School
11 professor, and I teach lawyers and judges, but I
12 don't have any formal training.

13 Q. All right. When you say you teach
14 lawyers and judges, what do you mean by that, sir?

15 A. I've taught federal judges in the George
16 Mason Law School program for judges, including
17 Judge Weinstein and other judges that have taken
18 it, and I've taught many, many state judges in
19 programs run throughout the country by the
20 University of Kansas Law School, but it's not
21 restricted to Kansas state judges.

22 Q. There are two major degreed
23 programs for state judges. Have you ever taught
24 at the state judges school in Reno?

25 A. No.

1 Q. And in Virginia?

2 A. No. I've only taught in the Kansas state
3 judges program.

4 Q. Okay. When you were at the Kennedy
5 School, sir, did you do any work dealing with
6 tobacco?

7 A. No.

8 Q. During any of your education from
9 '71 through roughly '76, which is your formal
10 degreed programs, I believe, did you do any work
11 for the tobacco interests?

12 A. No.

13 Q. During that period of time, '71 to
14 '76, were you involved in any litigation?

15 MR. WEIL: For anybody?

16 MR. BECNEL: For anybody, either
17 personally or for companies or plaintiffs or
18 whomever.

19 A. I assisted a Wharton professor on some
20 pollution analysis that I assume was related to a
21 case, but it was only a few days' work, and I
22 don't know whether it was really a legal case or
23 consulting or whatever.

24 Q. When did you start your litigation
25 consulting work and/or career in that field?

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1 A. Well, I'm not sure I've ever looked upon it
2 as a career. The first case I think I did was in
3 the -- I would have to look at my vitae. Well,
4 it's not listed here, but in the early 1980's, I
5 was retained to do airplane crash analyses by the
6 U.S. Department of Justice.

7 Q. What was that about?

8 A. Personal injury cases where people died in
9 airplane crashes, and they needed the damages
10 evaluated.

11 Q. And why did the Department of
12 Justice need that? Did it involve the federal
13 torts claim act or --

14 A. They were defendants along with the FAA.

15 Q. Okay. So you were representing the
16 U.S. Government basically as a defense expert to
17 calculate damages?

18 A. That's correct.

19 Q. Was there a difference between the
20 damages you calculated and the damages the
21 plaintiffs' experts calculated?

22 A. Yes.

23 Q. What was the difference?

24 A. I had lower numbers.

25 Q. Was it because of discount rates or

1 assigning different interest rates?

2 A. I don't recall the differences. This is 15
3 years ago at least, so I'm not sure what the
4 differences were.

5 Q. Approximately what percentage, sir,
6 of your income is generated from litigation or
7 consulting work that may not be litigation but
8 potential litigation?

9 A. It's been about 5 to 10 percent of my total
10 income has been related to litigation. It varies
11 by year depending on, if you have DES, for
12 example, it could be -- it's more than 5 or 10
13 percent.

14 Q. Roughly, and I'm not trying to
15 delve into your personal business, what would you
16 say the lowest and the highest would be during
17 that period of time on a yearly basis?

18 A. The highest, might be 25 percent, 30
19 percent.

20 Q. I mean in terms of \$10,000, -
21 \$50,000, \$100,000 or \$1,000. I'm just looking for
22 numbers.

23 A. It depends on what ends up being counted.
24 The only real big year in terms of strict
25 litigation work would be the DES year. That would

1 be in the vicinity of \$100,000. I'm not sure if
2 it's above or below, but it was that ballpark.

3 Q. That year. And your lowest year
4 would be roughly what?

5 A. It could be just \$5,000. There was one
6 year I know there's like a stretch of like eight
7 months I did nothing, so zero.

8 MR. BECNEL: Do you want to take a
9 two-minute break?

10 THE VIDEOGRAPHER: The time is
11 2:48, and we are going off the record.

12 (Recess)

13 THE VIDEOGRAPHER: The time is
14 5:01, and we are back on the record.

15 THE WITNESS: 3:04.

16 THE VIDEOGRAPHER: Oh. The time is
17 3:01, and we are back on the record.

18 BY MR. BECNEL:

19 Q. I have a copy of your report in
20 this case. Is that your report that you prepared,
21 sir?

22 MR. WEIL: You're referring to
23 what, just so there's no misunderstanding?

24 MR. BECNEL: I'm referring to his
25 expert opinion report produced in this litigation

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1 to the court and I assume to --

2 MR. WEIL: The one entitled "Expert
3 Report of Professor W. Kip Viscusi"?

4 MR. BECNEL: That's the one I'm
5 talking about.

6 MR. WEIL: Okay.

7 A. This is the report that is my report which
8 I submitted. I was assisted with some of the
9 references, but it's my report.

10 Q. Okay. That's what I need to know.
11 Who else participated in any way, shape or form in
12 the writing of this report or providing
13 information for this report?

14 A. Nobody else participated in the writing of
15 it, but in terms of finding the particular cite
16 for, let's say the Chaloupka paper, that would be
17 Dr. Albert Nichols.

18 Q. And he is located here?

19 A. That's correct.

20 Q. Okay. What information did you
21 tell him you needed him to obtain for you to
22 assist you in this endeavor?

23 A. Mostly it was bibliographic cites and, in
24 some cases, exact percentages from articles or
25 exact particular numbers, so when I drafted the

1 report, I was visiting the University of Wyoming,
2 so I did not have with me my library of
3 materials. All I had with me was my smoking book,
4 so to the extent that it took me beyond my smoking
5 book and a couple smoking articles I had, then I
6 asked him to give me the bibliographic references
7 to put in.

8 Q. When we talk about your smoking
9 book, we're referring to Smoking Making the Risky
10 Decision?

11 A. That's correct.

12 Q. Okay. What couple of articles did
13 you have with you in Wyoming?

14 A. Other articles I had written, my article
15 on -- I believe it's called "The social
16 consequences of cigarette smoking" or some such
17 title, and I had a new paper that I am writing on
18 the cigarette litigation.

19 Q. Who funds any of those writing
20 periodicals that you do, or do you do it yourself?

21 A. The study on the social consequences of
22 smoking was funded by the National Bureau of
23 Economic Research, and my research in general is
24 funded at Harvard by the Harvard Law School,
25 various funds at Harvard Law School.

1 Q. Do you teach full time?

2 A. It's called a full-time job, but I only
3 teach on Mondays and Tuesdays. I do research on
4 the other days.

5 Q. All right. When you say you only
6 teach, how many hours of classes per week do you
7 teach?

8 A. It's five hours a week. That's the
9 standard full-time teaching load at Harvard Law
10 School.

11 Q. And you then devote whatever other
12 time is required doing your research projects?

13 A. Research, meeting with students. I
14 supervise students' third-year papers. I
15 participate in various seminars for which I don't
16 get course credit. I run an economics journal.
17 I'm on the editorial boards of another handful of
18 journals, so I do a number of things related to my
19 position other than simply being in the classroom.

20 Q. If I were to ask you, sir, your
21 average work week, how many hours per week doing
22 all of those things, either research, writing,
23 class work, consultation with students and the
24 like? What is your hourly load in a week? And
25 I'm using an average.

1 A. At least 60 hours a week.

2 Q. Do you live full time in the Boston
3 area?

4 A. I live [DELETED]

5
6 Q. And how long have you been back at
7 Harvard in your professorship?

8 A. Full time I've been back here since a year
9 ago July.

10 Q. Prior to that, you were at Duke?

11 A. At Duke where I also maintain a residence,
12 so I have a residence in both places.

13 Q. And at Duke, did you have any
14 research papers or projects funded by the tobacco
15 industry?

16 A. No. I've never had my research funded by
17 the tobacco industry. I have consulted to law
18 firms representing them from time to time, but
19 I've never gotten any grants from them to do
20 research projects.

21 Q. How many times would you say you
22 have consulted with either law firms, The Tobacco
23 Institute or any of the defendant companies in the
24 tobacco litigation, whether smokeless, cigars,
25 cigarettes?

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1 A. I don't know if it breaks out cleanly.
2 I've never done any work directly for The Tobacco
3 Institute. The only work I've done directly for
4 cigarette companies was a morning of work on the
5 Premier cigarette warning label. I've done work
6 for law firms representing them, let's say, on
7 four different things, but let's say the Medicaid
8 suits may involve numerous consultations, numerous
9 lawsuits, et cetera, so I would think of four
10 things that come off the top of my head.

11 Q. Have you ever heard of William
12 Dunn Jr.?

13 A. I don't believe so.

14 Q. From Philip Morris?

15 A. I don't believe so.

16 Q. Do you consider cigarettes to be
17 conceived not as a product but as a package?

18 MR. WEIL: Objection. What does
19 that have to do with his opinion in this case?

20 MR. BECNEL: I asked him the
21 question.

22 MR. WEIL: I'm just going to make a
23 statement just so you know where I'm coming from
24 on this. It's my clear impression that the
25 federal rules allow you to ask any question you

1 want about what his opinion is going to be at
2 trial, how he got there, what he looked at, who he
3 talked to about it, et cetera, et cetera, but it
4 is not your privilege at this deposition to go
5 beyond the four corners of his report and just
6 either try to make him into an expert for yourself
7 or ask him other questions that may satisfy your
8 curiosity on some subject that's not related to
9 his expert report. And I'm going to instruct him
10 not to answer questions that I think are
11 completely unrelated to his expert report. If
12 it's related to his expert report, fine, you know,
13 you can ask away, but if it's not, I think it's
14 harassment and improper, and I'm going to instruct
15 him not to answer.

16 MR. BECNEL: So are you instructing
17 him not to answer that question?

18 MR. WEIL: Well, I'm asking you --
19 I don't see the relevance. If you can tell me
20 what it is --

21 Q. Do you consider a cigarette to be
22 not conceived as a product but as a package?

23 MR. WEIL: What does that have to
24 do with his opinion?

25 MR. BECNEL: It's going to have a

1 lot to do with it, and I'm going to get there, but
2 I mean, I can't explain it to you before I get
3 there, so you can either tell him to answer or
4 don't answer. It's up to you.

5 MR. WEIL: Well, I'm going to give
6 you a little leeway, because you've represented to
7 me that it has something to do with his opinion.
8 And since this is the first time the issue has
9 come up, I'm assuming you're making that
10 representation in good faith, and we'll go ahead.

11 A. I don't understand what you mean by
12 "package."

13 Q. All right. Have you ever heard of
14 cigarettes as being a nicotine delivery device?

15 A. I've heard that terminology used by people
16 attacking the cigarette industry.

17 Q. Do you agree or disagree with that,
18 that nicotine and cigarette smoke, that the
19 cigarette is a nicotine delivery device?

20 MR. WEIL: I'm going to object and
21 instruct him not to answer.

22 Q. Do you know the various types of
23 tobacco, sir?

24 A. Burley tobacco. Other than that, I don't
25 know.

1 Q. Do you know what flue cured tobacco
2 is?

3 A. I've heard it before having grown up in
4 Kentucky, but I don't know what it is.

5 Q. Do you know what dark tobaccos are?

6 A. Other than an inference I'd make from the
7 English language, no.

8 Q. Do you know what light air-cured
9 tobaccos are?

10 A. No.

11 Q. Have you ever heard of Maryland
12 tobacco?

13 A. It's probably tobacco either grown in
14 Maryland or a type of seed developed in there.

15 Q. Do you know anything about oriental
16 tobaccos?

17 A. No, other than the fact that it presumably
18 came from the Orient.

19 Q. Do you know anything about pique
20 tobaccos?

21 A. No. I've never heard that.

22 Q. Are you familiar with tobacco
23 extracts in nicotine?

24 A. No, I'm not.

25 Q. Have you ever been consulted by the

1 tobacco industry concerning their labels and
2 warnings on cigarette packages?

3 A. Yes.

4 Q. When?

5 A. I don't recall the exact year, but it was
6 after the Premier cigarette initially was
7 marketed, and I was consulted regarding the hazard
8 warning for fire risks associated with the Premier
9 cigarette.

10 Q. Who manufactured the Premier
11 cigarette?

12 A. R.J. Reynolds.

13 Q. And what year was that?

14 A. I don't recall, but it's in my book.

15 Q. Approximately?

16 A. '80s, 1980's.

17 Q. In the '80s. Where were you
18 working at the time?

19 A. Duke University.

20 Q. Does Duke University have any
21 endowments by the tobacco industry?

22 MR. WEIL: Objection. Lack of
23 foundation.

24 A. I don't know where their endowment income
25 comes from. I know James B. Duke was a tobacco

1 baron, and that's who they named the university
2 after, so I assume that, once upon a time back
3 there early in the century, he donated money for
4 this.

5 Q. Okay. Since you've done a lot of
6 warning labels dealing with tobaccos and other
7 products, meaning consumer warning labels. And
8 that's what you've done some work in; is that not
9 correct?

10 A. Mostly for household chemicals rather than
11 cigarette type products.

12 Q. Are you familiar with the additives
13 that are added to tobacco by the cigarette
14 manufacturers in their products?

15 MR. WEIL: Objection.

16 A. I've heard that there are additives. I've
17 just read newspaper accounts of them.

18 Q. Are you familiar with nitrogen
19 dioxide?

20 A. No.

21 Q. Have you ever heard of it?

22 A. It sounds like something that would come up
23 in a chemistry class, but I don't know where it's
24 found, what its properties are.

25 Q. In developing the labeling that you

1 did for R.J. Reynolds, sir, did you consider that
2 tobacco smoke generates nitrogen dioxide?

3 MR. WEIL: Objection. He's not
4 testifying in this case about the hazard warnings
5 on the Premier package. That's not what he's
6 testifying about.

7 MR. BECNEL: I understand. We're
8 dealing with credibility now, counsel.

9 A. I was not asked to work on the hazard
10 warnings pertaining to the health risks of the
11 Premier cigarette, because they were mandated by
12 congress. I was called in on an issue pertaining
13 to the fire risks associated with that particular
14 cigarette.

15 Q. Are you familiar with nitrogen
16 monoxide?

17 MR. WEIL: Objection.

18 A. I've heard of it as a pollutant, but once
19 again, I don't know its relationship to
20 cigarettes.

21 Q. Are you aware that nitrogen dioxide
22 is both carcinogenic and mutagenic?

23 MR. WEIL: Objection. I instruct
24 the witness not to answer.

25 Q. Have you reviewed any papers

1 dealing with nitrogen dioxide in cigarette smoke?

2 MR. WEIL: In connection with his
3 opinion in this case?

4 Q. In connection with any of your
5 reading, sir.

6 MR. WEIL: Objection.

7 Q. You can answer.

8 A. I don't recall.

9 Q. Are you aware that one of the
10 largest known toxic agents in any cigarette
11 naturally occurring is nitrogen dioxide and has
12 been known since the '40s to produce cancer and to
13 cause mutagenic changes in individuals?

14 MR. WEIL: Objection. I instruct
15 the witness not to answer.

16 Q. Are you familiar with the
17 engineering techniques to alter or modify or spike
18 cigarettes with other chemicals not naturally
19 occurring in tobaccos?

20 MR. WEIL: Objection. I instruct
21 the witness not to answer.

22 Q. Are you familiar with ammonia, sir?

23 MR. WEIL: Objection.

24 Q. You can answer.

25 A. I know what household ammonia is.

1 Q. All right. Do you know if ammonia
2 is on the OSHA list of highly toxic hazardous
3 materials?

4 MR. WEIL: Objection. I instruct
5 the witness not to answer.

6 MR. BECNEL: Counsel, I believe
7 this witness has said he's consulted to government
8 agencies.

9 MR. WEIL: He's not testifying on
10 that issue in this case. If you would review his
11 report --

12 MR. BECNEL: I've reviewed it.

13 MR. WEIL: -- and confine your
14 questioning to his opinion in this case, we can
15 avoid these objections.

16 Q. Are you familiar with the
17 technology of low tar cigarettes, sir?

18 MR. WEIL: Objection. I instruct
19 the witness not to answer.

20 Q. Are you familiar with the
21 percentage of nicotine in a low tar cigarette?

22 MR. WEIL: Objection. I instruct
23 the witness not to answer.

24 Q. Do you know the pharmacology of
25 nicotine?

1 MR. WEIL: Objection.

2 A. No.

3 Q. From your basic chemistry courses
4 that you took, do you know the chemical formula
5 for nicotine?

6 A. It didn't come up.

7 Q. Do you know how nicotine is
8 absorbed or distilled from burning tobacco?

9 MR. WEIL: Objection.

10 A. No.

11 Q. Do you know if nicotine is carried
12 on the tar of cigarettes?

13 MR. WEIL: Objection. I instruct
14 the witness not to answer.

15 Q. Do you know how nicotine is
16 absorbed into the body?

17 MR. WEIL: Objection. Same
18 instruction.

19 Q. Sir, you've given a number of
20 opinions as to whether people can smoke or not
21 smoke; isn't that correct?

22 MR. WEIL: Objection. That's not
23 what his opinion is.

24 Q. You can answer.

25 A. My opinions are on the character of the

1 decisions people make with respect to smoking.
2 That's different than the way you phrased the
3 question.

4 Q. Do you know if cigarette smoke from
5 flue cured tobacco in American blend mixtures is
6 acidic or not?

7 MR. WEIL: Objection. I instruct
8 the witness not to answer.

9 Q. Do you know the amount that smokers
10 absorb of nicotine in mainstream American
11 cigarettes today?

12 A. No.

13 Q. Do you know the metabolism of
14 nicotine absorption and how it happens?

15 A. No.

16 Q. Do you know how nicotine is
17 excreted from the body?

18 MR. WEIL: Objection. I instruct
19 the witness not to answer.

20 Q. Do you know any of the
21 pharmacologic properties of nicotine?

22 MR. WEIL: Objection. I instruct
23 the witness not to answer.

24 Q. Do you know if nicotine has any
25 effect on neurotransmitters in the body?

1 MR. WEIL: Objection. I instruct
2 the witness not to answer.

3 Q. Do you know the receptor
4 interactions of nicotine and how it binds and
5 effects the central nervous system?

6 MR. WEIL: Same objection and
7 instruction.

8 Q. Do you know what the cardiovascular
9 effects of nicotine is on the body?

10 MR. WEIL: Same objection and
11 instruction.

12 Q. Do you know what a psychoactive
13 drug is?

14 MR. WEIL: Same objection and
15 instruction.

16 Q. Do you know if nicotine is a
17 psychoactive drug, sir?

18 MR. WEIL: Same objection and
19 instruction.

20 Q. Do you know if there's any reason -
21 to believe if a person smokes he might be prone to
22 use other drugs?

23 A. We observe correlations, but that's
24 different than knowing causality, and I don't know
25 the causality.

1 Q. Have you reviewed the American
2 Psychiatric Association's definition of addiction?

3 A. I've reviewed what was in the Surgeon
4 General's report. I'm not sure if that's the same
5 definition.

6 Q. Have you ever heard of DSM-III,
7 DSM-III-R, or DSM-IV?

8 A. These are not the kinds of things I would
9 memorize, so I'm not sure if I've heard of it or
10 not.

11 Q. Are you familiar with the American
12 Psychiatric Association's practice guidelines for
13 the treatment of patients with nicotine
14 dependence?

15 A. I haven't seen -- if they are separate from
16 anything in the Surgeon General's reports, I would
17 not have seen them. I've not seen a document like
18 that.

19 Q. Do you know what nicotine
20 dependence is as a definition?

21 A. I regard that more as a medical judgment
22 than an economic judgment. I'm here as an
23 economist.

24 Q. I'm going to show you a document,
25 sir, which I'm going to mark V-5 and ask you if

1 you have a definition for nicotine addiction. Do
2 you have a definition?

3 MR. WEIL: Can you show him the
4 document first?

5 A. Can I see the document?

6 MR. BECNEL: Well, that has nothing
7 to do with the document.

8 MR. WEIL: Okay. The way you
9 phrased the question, you said, "I'm going to show
10 you a document" --

11 MR. BECNEL: I am.

12 MR. WEIL: -- "and ask you..." and
13 I wasn't asking.

14 MR. BECNEL: Okay. I'm sorry.

15 MR. WEIL: Okay.

16 Q. What is your definition of nicotine
17 addiction?

18 MR. WEIL: His lay definition?

19 MR. BECNEL: Whatever definition he
20 chooses to use.

21 MR. WEIL: As an economist, okay.

22 A. I don't define terms such as "addiction,"
23 "habituation." These are medical distinctions.
24 From an economic standpoint, the only issue is
25 that there's some cost to the individual in

1 changing behaviors, so I view that as a
2 transactions cost of changing behavior.

3 Q. Would it be fair to say that you
4 would defer to psychiatrist or those learned in
5 those particular disciplines as to what a
6 definition of terms is for nicotine addiction or
7 nicotine dependency?

8 A. Not exactly. What I'm saying is, these are
9 terms that they've set up for their profession,
10 and if these are the terms they want to use to
11 characterize the phenomenon as they understand it,
12 that's fine, but looking at it in economic terms,
13 all we really need to know has to do with the
14 difficulty of quitting smoking, so it's a cost to
15 change.

16 Q. Do you consider nicotine to be
17 addicting?

18 MR. WEIL: Objection. I instruct
19 the witness not to answer as phrased, as that
20 question is phrased.

21 Q. What is drug addiction, sir, your
22 definition of drug addiction?

23 MR. WEIL: Objection. I instruct
24 the witness not to answer. He's not a drug
25 addiction expert.

1 Q. Do you know what the difference
2 between physical and psychological dependence is
3 on nicotine?

4 A. Once again, these are medical distinctions,
5 not economic distinctions, so economists are not
6 concerned with the mechanism. They're concerned
7 with whether there are costs to change
8 irrespective of the process that results in it.

9 Q. You're working for Philip Morris in
10 this case, is that correct?

11 MR. WEIL: Objection.

12 A. No.

13 Q. For the law firm representing
14 Philip Morris?

15 A. I assume that's who they're representing,
16 but I've had no contact with anybody from Philip
17 Morris and they could be representing other
18 cigarette companies as well.

19 (Document marked as Exhibit V-5
20 for identification)

21 Q. Me show you a Philip Morris
22 document, sir, which is V-5.

23 MR. BECNEL: And counsel, you can
24 show the witness.

25 Q. And I'll ask you to turn to Page 6

1 of that document.

2 A. (Witness complies)

3 Q. And under "Drugs and Their Effects,

4 What is drug addiction? Is there a difference
5 between physical and psychological dependence?"

6 have you ever seen that document before, sir?

7 A. I don't believe I have.

8 Q. Do you agree with Philip Morris's
9 definition in this document, V-5, of what drug
10 addiction is?

11 MR. WEIL: Objection. I instruct
12 the witness not to answer.

13 Q. You would disagree with the
14 definition of Philip Morris in terms of drug
15 addiction?

16 MR. WEIL: Objection. I instruct
17 the witness not to answer.

18 Q. Okay.

19 MR. BECNEL: Counsel, I'm going to
20 refer you to the first page of the expert report -
21 of Professor W. Kip, and it says under

22 Subsection 2 that "My own work shows that, in
23 recent years, consumers generally over estimate
24 the health risk posed by smoking as compared to
25 the health risk estimates made by the Surgeon

1 General and other health officials."

2 That would assume that he
3 understands the terminology of some of the terms
4 I'm using, and to tell and instruct him not to
5 answer these questions as to what he understands
6 these terms to be or mean would make it very
7 difficult, in my opinion, to be able to espouse
8 any position without some definition of terms, and
9 that's all I'm trying to get.

10 MR. WEIL: I think that's
11 legitimate, and he did answer your question about
12 what was his definition of addiction. He answered
13 that question. That is a legitimate inquiry,
14 which is why I let you go into it.

15 Q. Well, are you familiar with the
16 1988 report of the Surgeon General on nicotine
17 addiction?

18 A. I have read most of that report. I'm not
19 sure if I've read all of it.

20 Q. Did you consider that there were
21 commonalities between nicotine dependence and
22 other drugs?

23 A. That's long been a matter of controversy in
24 terms of these linkages, so I'm not exactly sure
25 what commonalities you're referring to.

1 Q. All right. Did you read any of the
2 reports or the learned treatises or journal
3 articles dealing with that linkage between
4 nicotine dependence and other drugs?

5 A. I've read some studies in the literature by
6 social scientists.

7 Q. Did you read the Henningfield
8 studies?

9 A. Not that I recall.

10 Q. Did you read the Gaffe, G-a-f-f-e,
11 and Kanzler, K-a-n-z-l-e-r, studies?

12 A. No.

13 Q. Did you actually read the entire
14 1988 report of the Surgeon General?

15 A. I believe I did read most or all of it, but
16 not in the last five years. I mean, it was some
17 time ago.

18 Q. So you didn't read that study and
19 that report in preparation for this case?

20 A. I have not looked at that report in years .
21 for any case.

22 Q. Let's talk about how you prepared
23 for this deposition, sir. Would you tell me how
24 you prepared for this deposition.

25 A. I had some discussion this morning with Mr.

1 Weil.

2 Q. And I don't know want to know what
3 he told you. I just want to know how you prepared
4 for it.

5 A. And before that, I reviewed material in my
6 book as well as a number of things in the
7 literature reading over various pieces.

8 Q. Okay. Now, your book, you're
9 referring again to V-1, which is Smoking Making
10 The Risky Decision?

11 A. That's correct.

12 Q. That was written in what year?

13 A. I don't know. It was published in 1993, I
14 think.

15 Q. Do you know how long you worked on
16 this book?

17 A. The previous year, let's say 1992.

18 Q. Pardon?

19 A. Maybe 1992, but I had worked on pieces of
20 it over a long period of time.

21 Q. I have it apparently being
22 published in '92, and I'm not trying to --

23 A. Then that's when I did it.

24 Q. I understand.

25 A. There's too many books to keep track of.

1 Q. That's why I'm asking you.

2 MR. WEIL: Can you show him the
3 book?

4 MR. BECNEL: Sure absolutely.

5 A. It's '92.

6 Q. It's '92.

7 A. So I did most of the work on it in '91, I
8 would think.

9 Q. So you did the work in '91,
10 published in '92. Was this peer reviewed?

11 A. Yes.

12 Q. By whom?

13 A. The reviewers are anonymous. That's the
14 practice of Oxford University Press, so they
15 select the reviewers.

16 Q. All right. Do you receive
17 royalties from this book?

18 A. Yes, I do.,

19 Q. And how much do you get per book?

20 A. Not much. A few bucks a book.

21 Q. About how many books were sold?

22 A. About a couple thousand.

23 Q. In terms of your research in
24 writing this book, man-hours, how many man-hours
25 would you say went into the project --

1 A. Well, to the best --

2 Q. -- or woman-hours, to be
3 politically correct? Both.

4 A. It depends on what you count. The book
5 draws on a number of articles that I'd written,
6 but even counting the articles, this was done
7 during a sabbatical year where I had the entire
8 year off with no teaching, and this was the major
9 thing I did that year. So I would say the better
10 part of a year was spent writing it and distilling
11 my other articles that I'd done in the previous
12 years.

13 Q. Are you familiar with personality
14 types that make or make a decision to smoke?

15 MR. WEIL: Objection. Vague and
16 ambiguous.

17 A. Personality is not what economists do.

18 Q. I understand. So you have not used
19 any psychological, psychiatric definitions in
20 terms of nicotine dependence, nicotine addiction.
21 as definitions to create your theory and thesis in
22 this case; is that correct?

23 A. No, because a lot of those sound like
24 outcomes as opposed to what we call exogenous
25 variables, and that's what we're interested in.

1 Q. Do you consider tobacco to have
2 been universally accepted as a form of drug
3 dependence?

4 MR. WEIL: Objection. I instruct
5 the witness not to answer.

6 Q. Are you familiar from your reading
7 and the literature searches that you've done
8 whether tobacco adversely or affirmatively affects
9 the central nervous system?

10 A. I've seen that discussed, but I'm not a
11 doctor, so I couldn't bring any independent
12 judgment on this issue.

13 Q. Are you familiar with the economics
14 of tobacco?

15 MR. WEIL: Objection. Vague and
16 ambiguous

17 A. It is vague and ambiguous, because it's a
18 big -- I'm an economist, and I've published on
19 tobacco, so I claim some familiarity with this
20 general area.

21 Q. Approximately how much in any one
22 year over the last ten years would you estimate
23 Americans spend on tobacco products?

24 A. Well, that's the kind of thing I could look
25 up, so because I can look it up easily, I don't

1 memorize it, so I really don't know. I know they
2 spend a lot, but I have no idea.

3 Q. It's in the hundreds of millions or
4 billions, or do you have any idea?

5 A. It's in the billions.

6 Q. All right. Can you give me a range
7 of how many billions, would you say, if you have
8 50 million Americans that smoke?

9 A. I don't even want to try to construct it,
10 because it would be guessing at this stage.

11 Q. All right. Have you looked at any
12 of the publications of The Tobacco Institute that
13 have given that data?

14 A. Yes.

15 Q. What documents have you reviewed
16 from The Tobacco Institute?

17 MR. WEIL: In preparation for his
18 report?

19 MR. BECNEL: In preparation for his
20 report or his opinion or just general knowledge
21 about the subject.

22 A. One document that they publish, the tax
23 burden on tobacco, so I have that annually for a
24 number of years.

25 Q. Why do you receive that annually?

1 A. I ask them to mail it to me because that's
2 the data that not only I use, but any economist
3 who does research on tobacco uses, because that is
4 the only place I know of that has information on
5 the tax rates collected by state on tobacco

6 products, tobacco sales and similar statistics.

7 Q. Can you tell me, sir, who at The
8 Tobacco Institute did you request that they send
9 you information on excise taxes on cigarette
10 products or tobacco products?

11 A. For receiving the publication of the tax
12 burden on tobacco, I did not make the call. I had
13 my secretary call and request it.

14 Q. I mean who do you get it from?

15 A. It just shows up in the mail without a
16 cover letter. Nobody writes. They just stick it
17 in the mail. I'm sure they get lots of these
18 requests.

19 Q. Do you have any information from
20 your reading of The Tobacco Institute publications
21 about how many people smoke in the United States?

22 A. I don't think that's in there. I think I
23 get that from a statistical abstract or other data
24 sources.

25 Q. But what is your information, sir,

1 that you use to use numbers to help write this
2 report?

3 MR. WEIL: Objection. It assumes
4 facts not in evidence.

5 Q. You can answer.

6 A. I use a variety of data sets on different
7 issues to get at different aspects of the smoking
8 decision.

9 Q. Well, about approximately how many
10 people smoke in the United States at this time
11 within the last few years?

12 A. Roughly a fourth of the adult population.

13 Q. And how many people is that?

14 A. I don't know. I'd have to look up the
15 adult population. It's millions. It's a lot of
16 people.

17 Q. Are you familiar with the states
18 that grow tobacco as an economist?

19 A. Kentucky, North Carolina, Virginia.

20 Q. Any others?

21 A. Probably a lot of other ones grow it, but
22 those are three of the leading ones. Connecticut
23 grows tobacco for cigars, so other states can grow
24 tobacco. Indiana you can grow tobacco easily.

25 Q. Have you ever heard of the tobacco

1 block of southern states?

2 A. No, I've never heard that term.

3 Q. Are you familiar with what two
4 states produce most of the tobacco in the country?

5 MR. WEIL: Objection.

6 A. No, because as I indicated, I was thinking
7 of three as being the three leaders.

8 Q. And who are those three leaders?

9 MR. WEIL: Objection.

10 A. My guess, without looking at statistics,
11 but just as an impression, would be Kentucky,
12 North Carolina and Virginia.

13 Q. But you don't know the rankings of
14 any one of those three?

15 MR. WEIL: Objection.

16 A. It's not what I've written about.

17 Q. Okay. Do you know who are the two
18 major producers of cigarette products?

19 MR. WEIL: Which companies?

20 MR. BECNEL: Yes.

21 A. Philip Morris and R.J. Reynolds.

22 Q. Do you know approximately how much
23 of the market that those two companies control?

24 MR. WEIL: Objection.

25 A. They control the majority of the market.

1 Q. Percentage-wise?

2 MR. WEIL: Objection.

3 A. In terms of sales, I'd say maybe 60
4 percent, somewhere in there.

5 Q. If The Tobacco Institute in 1989
6 says they control three quarters of the market,
7 would you have any information to agree or
8 disagree with that figure?

9 MR. WEIL: Objection.

10 A. I don't know what the share is.

11 Q. Do you know any information about
12 the earnings to sales ratio for tobacco products?

13 A. No

14 Q. Have you ever heard of the earnings
15 to sales ratio for tobacco products?

16 MR. WEIL: Objection.

17 A. No

18 Q. As an economist, does tobacco have
19 the largest earnings to sales ratio of any
20 consumer product in the world?

21 MR. WEIL: Objection. I instruct
22 the witness not to answer.

23 Q. You've never heard of the term
24 earnings to sales ratio, sir?

25 MR. WEIL: Objection. I instruct

1 the witness not to answer.

2 MR. BECNEL: Counsel, I think
3 that's squarely within his field of economics.

4 MR. WEIL: It may be within the
5 field of economics, but it's not within the field
6 of his report in this case.

7 MR. BECNEL: Absolutely it is.

8 MR. WEIL: Well, I think it is
9 absolutely not.

10 Q. Are you familiar with the excise
11 taxes on cigarettes?

12 A. Yes.

13 Q. Can you tell us approximately -- in
14 1990, approximately how much in excise taxes were
15 paid or billed to the cigarette manufacturing
16 companies or their consumers?

17 A. I'd just want to look it up in the tax
18 burden on tobacco. It's about -- I'm not sure if
19 it's 1990, but in the 1990's, early 1990's, 54
20 cents a pack total state and federal tax.

21 Q. Are you aware that The Tobacco
22 Institute, between 1989 and 1991, stated that 9.6
23 billion roughly equal to the federal government's
24 4.07 billion and the state's 5.56 billion were the
25 excise taxes?

1 A. That would make sense, because they sell
2 over 20 billion packs of cigarettes a year with a
3 tax of over 50 cents a pack.

4 Q. Can you tell me about the
5 consumption, the number of cigarettes consumed, by
6 the average citizen in the United States?

7 MR. WEIL: Per year? Per day?

8 MR. BECNEL: Per year.

9 Q. Either per day, per week, per
10 month, per year, anything that you're more
11 comfortable with.

12 A. By the average person, no, because you'd
13 want to average in non-smokers as well, but if
14 it's 20 billion people -- 20 billion cigarettes or
15 22 billion, something in that range cigarettes,
16 divided by a couple hundred million adults, you
17 can, you know, do the math.

18 Q. Is it fair to say that the typical
19 smoker consumes close to 11,000 cigarettes during
20 the year, about 30 cigarettes a day?

21 MR. WEIL: Objection.

22 A. A pack and a half a day is a number I've
23 encountered.

24 Q. Are you aware of how much the
25 average citizen who smokes cigarettes at that

1 level, a pack, pack and a half a day, spends on
2 cigarettes per year?

3 MR. WEIL: Objection.

4 A. I've presented such statistics in articles,
5 but it's not something I memorize.

6 Q. Roughly?

7 MR. WEIL: Objection.

8 A. \$1,000.

9 Q. Is the United States the largest
10 consumer of tobacco products in the world?

11 MR. WEIL: Objection. I instruct
12 the witness not to answer.

13 MR. BECNEL: I think this is
14 clearly within his field, to extrapolate the
15 numbers, but...

16 Q. Do you know if the United States is
17 the world's largest exporter of tobacco products?

18 MR. WEIL: Objection. I instruct
19 the witness not to answer.

20 Q. Are you familiar with whether the
21 cigarette companies have increased the amount of
22 supply of cigarettes domestically and export-wise
23 over the last year?

24 MR. WEIL: Objection. I instruct
25 the witness not to answer.

1 Q. What are the four major core areas
2 in the tobacco industry, sir?

3 MR. WEIL: Vague and ambiguous. I
4 don't know what you mean.

5 THE WITNESS: I don't know what he
6 means.

7 Q. Do you know what four major core
8 sectors are, tobacco growing, product
9 manufacturing, wholesaling and retailing?

10 MR. WEIL: Objection. I instruct
11 the witness not to answer.

12 Q. Do you know what the gross estimate
13 of income per acre of tobacco farming is in the
14 United States?

15 MR. WEIL: Objection. I instruct
16 the witness not to answer.

17 Q. Do you know how many acres of
18 tobacco are harvested in the United States?

19 MR. WEIL: Same objection and
20 instruction.

21 Q. Are you familiar with the Chase
22 Ecometrics Report funded by the industry
23 concerning the macroeconomic model on cigarette
24 smoking?

25 A. No.

1 Q. Are you familiar if cigarette
2 products were either outlawed or banned or taxed
3 so highly that that part of the economy would
4 shift to other manufacturing sectors and services?

5 A. Shutting down an industry is always
6 costly. On the other hand, 50 years from now, the
7 people who would have grown tobacco will be doing
8 other things. It's a question of how many
9 disruptions you cause in the meantime and how much
10 their income drops over the long-run because
11 you've taken away a source of livelihood, just
12 like if we were to abolish lawyers, lawyers, many
13 of them would get other jobs, but they may not be
14 as good jobs.

15 Q. Were you aware that the tobacco
16 industry did those studies?

17 A. No.

18 Q. Were you aware of the results of
19 those studies?

20 A. No.

21 Q. You have no opinion as to what the
22 increase in taxation to make it almost prohibitive
23 would be on the economy?

24 MR. WEIL: Objection. I instruct
25 the witness not to answer.

1 Q. Do you know what the GNP is in
2 terms of tobacco?

3 MR. WEIL: Objection. I instruct
4 the witness not to answer.

5 Q. Do you know what the tobacco-
6 related medical cost is in the United States?

7 MR. WEIL: Objection. I instruct
8 the witness not to answer.

9 Q. Are you familiar with the Office of
10 Technology Assessment in the Congress, sir?

11 A. Yes.

12 Q. Have you ever read their reports
13 concerning the cost of medical care for people who
14 smoke?

15 MR. WEIL: Objection. I instruct
16 the witness not to answer. That's not the focus
17 of his testimony in this case.

18 Q. You were a consultant in the
19 Mississippi tobacco action, were you not?

20 A. Yes.

21 Q. Did you render a report in that
22 case?

23 MR. WEIL: A written report?

24 MR. BECNEL: Any report, oral or
25 written.

1 A. I may have had a one- or two-page
2 statement. I don't recall.

3 Q. What was the nature of your
4 statement in that case?

5 A. That I would be testifying on people's risk
6 beliefs with respect to smoking. I'm not sure
7 whether market share liability was in in
8 Mississippi, so I'm not sure of the scope of what
9 the report indicated, but it just indicated topics
10 that would be covered by me as opposed to
11 conclusions I would draw.

12 Q. Did you have, sir, any opinion
13 concerning medical cost in that case?

14 A. No. I had an opinion regarding the
15 appropriate methodology for calculating the
16 medical cost, but in that state I did not provide
17 an expert opinion on the level of those costs.

18 Q. What is your methodology of
19 providing that estimate of cost?

20 MR. WEIL: Objection. I instruct .
21 the witness not to answer.

22 Q. Have you done any studies
23 concerning the estimated loss of life from
24 cigarette smoking in terms of productivity?

25 MR. WEIL: Objection. I instruct

1 the witness not to answer.

2 Q. Have you done any studies
3 concerning the economic loss to society for people
4 sick as a result of cigarette smoking?

5 MR. WEIL: Objection. I instruct
6 the witness not to answer.

7 Q. Are you familiar with the
8 consumption and health effects of cigarette excise
9 taxes?

10 A. I'm not sure if I understand that question.

11 Q. Are you aware of the Warner report
12 in 1989 dealing with that subject?

13 A. I've read a number of articles by Ken
14 Warner. I'm not sure what this particular report
15 is. I'm assuming it's Ken Warner you're speaking
16 of.

17 Q. Do you know who he was working for?

18 A. No.

19 Q. Do you know if his report was used
20 as part of the Surgeon General's 1989 report?

21 A. I don't know. I know that some of his
22 studies have been cited in Surgeon General's
23 reports, yes.

24 Q. Have any of your studies ever been
25 cited in a Surgeon General's report?

1 A. I haven't seen any citations there.

2 Q. Have you ever contributed to a
3 Surgeon General's report?

4 A. No.

5 Q. Have you ever been asked to consult
6 with the Surgeon General's report?

7 A. No.

8 Q. Have you ever been asked to consult
9 with the Center for Disease Control?

10 A. I've done work for the National Institute
11 of Health or the National Institute of Medicine,
12 but I'm not sure who's a parent to whom. If
13 that's a parent organization, the National
14 Institute of Medicine, I'm not sure whether the
15 CDC is under them, but I'm writing papers now with
16 the people at CDC.

17 Q. You've given an opinion, sir, that
18 a 10 percent price increase would decrease
19 consumption by 4 to 10 percent; is that correct?

20 A. Yes.

21 Q. How do you arrive at those figures?

22 A. That's based on the estimates of the demand
23 elasticity for cigarettes in the economics
24 literature.

25 Q. Are you aware that the Surgeon

1 General's report did that exact thing and came up
2 with a totally different figure than you had?

3 MR. WEIL: Objection. It assumes
4 facts not in evidence.

5 A. That plus the fact that the Surgeon General
6 is not an economist and I am would be my response.

7 Q. Were you aware that the Surgeon
8 General's report for the year I just talked about,
9 1989, said for a 10 percent increase in price,
10 there should be a decrease by 4 percent? Do you
11 agree or disagree with that?

12 MR. WEIL: Objection. It assumes
13 facts not in evidence, but you may answer.

14 A. That's the lower end of the range, so it's
15 not outside of my range. I have a larger range.

16 Q. And on what do you base your larger
17 range where you have more than doubled the range
18 of the Surgeon General and his economists?

19 MS. JOHNSON: Objection to the form
20 of the question.

21 A. The Surgeon General didn't have a range.
22 The Surgeon General gave a number. Second, I'm
23 not sure which economist, if any, contributed to
24 that, but that was a study published in 1989
25 presumably based on the literature through 1987,

1 and we've had more than a decade of studies since
2 then, so this is out of date.

3 Q. Do price changes have different
4 effects on different socioeconomic groups?

5 A. Although there are mixed results on that, I
6 believe the consensus now is that they do have
7 different price effects, yes, not on socioeconomic
8 but age groups.

9 Q. Have you read Townsend's study in
10 1987 analyzing the five major social classes and
11 how it effects --

12 A. No

13 Q. -- consumption on prices?

14 A. I don't believe so.

15 Q. Would you consider that increase in
16 taxes is more likely to encourage less affluent
17 members of society to avoid smoking or to quit or
18 to not start at all?

19 A. Well, there's both a price effect and an
20 income effect, but one thing we know about the
21 price effect is that teenagers would be more
22 responsive to higher prices, and to the extent
23 that they're less affluent, they would be more
24 responsive. The direction of the income effect
25 has changed over time.

1 Q. Are you familiar with the studies
2 done by Lewitt, Coate, C-o-a-t-e, & Grossman?

3 A. Yes.

4 MR. WEIL: Were you done with your
5 prior answer?

6 Q. I'm sorry.

7 A. I wasn't, but I forget how it would have
8 ended.

9 Q. I apologize. Don't ever let me do
10 that. I didn't intend to do it. I'm trying to do
11 it by ear and look at papers, so I apologize if
12 I've cut you off. I didn't mean to.

13 A. It's the only time so far. That's a pretty
14 good record.

15 Q. Are you familiar with any research
16 addressing the price responsiveness of children
17 and teenagers as compared with adults?

18 A. Yes.

19 Q. Who are the people's papers that
20 you have studied that have written on that
21 subject?

22 A. Lewitt, Coate & Grossman, for example.
23 Wasserman, et al., the Rand Corporation. There
24 are recent studies by Chaloupka and Michael
25 Grossman, so that's the cluster of people who are

1 working on the price sensitivity by age group.

2 Q. Is it not a fact that there's very
3 little research in that field?

4 A. Well, there are those four sets of
5 studies. I'm not -- from an economic standpoint,
6 that's pretty good. I mean, most economists would
7 call that a reasonable number of studies. They've
8 looked at lots of different data sets.

9 Q. Would you agree with the statement
10 by Lewitt, Coate & Grossman that says, "Little
11 research has been addressed in the price
12 responsiveness of children and teenagers as
13 compared with adults"? Would you agree or
14 disagree with the studies?

15 MR. WEIL: Can you give us the date
16 of that statement, counsel?

17 MR. BUCNEL: Yes, 1981.

18 A. That's correct. As of 1981, there was
19 little economic research on the variation in
20 elasticity by age group.

21 Q. When did the studies of children
22 first begin after '81?

23 A. That was the first one I know of in the
24 economics literature. Most people look at the
25 market as a whole. There is the subsequent

1 Wasserman study which is, I believe, cited in my
2 pile over there, and there are two new working
3 papers involving Frank Chaloupka published by the
4 National Bureau of Economics Research, which are
5 also in the materials that I'm providing.

6 Q. Are you familiar with the Harris
7 study, sir?

8 A. I'm not aware that he's done a study based
9 on age groups using original data. He may talk
10 about other people, but I don't know that he's
11 done a new study.

12 Q. Are you familiar with his studies
13 dealing with the health implications of the 1983
14 doubling of federal excise taxes on cigarettes?

15 A. I've read a number of his studies. I'm not
16 sure which -- do you happen to know if this is the
17 National Bureau of Economics Research working
18 paper or is this something put on the Worldwide
19 Web?

20 Q. This is his studies in '82 and his
21 studies in '86.

22 A. I've read his American Economic Review
23 article if that's one of them. I'm not sure if
24 I've read the other ones.

25 Q. Do you consider cigarette excise

1 taxation as a potentially powerful tool in the
2 formation of public health policy?

3 MR. WEIL: Objection. I instruct
4 the witness not to answer.

5 Q. Was that one of the premises of
6 those authors --

7 MR. WEIL: Objection.

8 Q. -- that you've read about, sir?

9 A. All I know is that Jeffrey Harris has been
10 a plaintiff's expert in these cases for over a
11 decade, so he may be taking an advocacy position.
12 I'm not sure.

13 Q. How about Lewitt?

14 A. I don't know much about him.

15 MR. WEIL: What's the question?

16 Q. Do you know what his position is as
17 the potential for using excise taxes to reduce
18 smoking?

19 MR. WEIL: Objection.

20 A. I don't know who Lewitt is other than this-
21 article. I've never heard of this person other
22 than that.

23 MR. BECNEL: We'll take a break.

24 THE VIDEOGRAPHER: The time is
25 4:00. We are going off the record. This is the

1 end of Cassette No. 1.

2 (Recess)

3 THE VIDEOGRAPHER: The time is
4 4:22. We are on the record. This is the
5 beginning of Cassette No. 2.

6 BY MR. BECNEL:

7 Q. I want to talk to you about your
8 opinion in this report, sir. The opinion that you
9 rendered mainly consists of two parts, is that
10 correct, Part 1 and Part 2?

11 A. That's correct.

12 Q. All right. You said the idea of
13 tobacco addiction. What is your term that you
14 used tobacco addiction in this report on the first
15 page? What do you understand that to mean?

16 A. Costs to changing your smoking decision.

17 Q. Now, in terms of this case, do you
18 believe that, as the excise taxes are increased,
19 you will have some proportionate decrease in
20 consumption?

21 A. Yes.

22 Q. Do you think that that's a good
23 thing?

24 A. I don't draw a value judgment with respect
25 to it; however, if people fully understand the

1 consequences of smoking and if there are no
2 societal costs resulting from smoking, then excise
3 taxes are bad from an economic standpoint.

4 Q. Do you realize that the tobacco
5 industry, often when the tax is increased, they
6 also increase their profitability margin?

7 MR. WEIL: Objection. I instruct
8 the witness not to answer.

9 Q. Have you done any studies
10 concerning the increase in cost or profitability
11 in addition to the excise tax issue?

12 A. No, my studies have not focused on
13 profitability.

14 Q. Do you know of any studies dealing
15 with the margin of profitability when excise taxes
16 are raised that the cigarettes use to help
17 increase their profitability?

18 MR. WEIL: Objection. I instruct
19 the witness not to answer.

20 MR. BECNEL: To the information of
21 any studies that he knows about on those issues?

22 MR. WEIL: On profitability?

23 MR. BECNEL: On profitability.

24 MR. WEIL: He's not here to testify
25 about profitability.

1 Q. Why do you consider that people
2 generally overestimate their health risks posed by
3 cigarettes?

4 A. The evidence I have with respect to both
5 lung cancer and smoking mortality risks indicates
6 that people substantially overestimate those risks
7 as well as the life expectancy loss associated
8 with smoking.

9 Q. What was the theory that you used
10 and methodology that you used to reach that
11 conclusion?

12 A. Well, in each case, I need a reference
13 point for what the true risks are that people are
14 either overestimating or underestimating. For
15 want of anything better and not wishing to get
16 into an extended analysis of the medical
17 literature, I took the Surgeon General's estimates
18 as my reference point for what the true risks
19 associated with smoking are. I then analyzed data
20 sets with respect to individuals' risk
21 perceptions, including some data I generated
22 myself, to assess whether the perceptions were
23 accurate.

24 Q. Has this theory been used before?

25 A. I think it's a well-known theoretical

1 approach with respect to other risks, to look at
2 the true risk and to see if people's perceptions
3 are above or below the true risk. This has been
4 done for other risks.

5 Q. What other risk has this been done
6 for?

7 A. Tornados, diabetes, cancer, heart disease,
8 stroke, emphysema. You name it in terms of how
9 people think about mortality risks generally, and
10 I've done it I believe for some consumer products
11 as well.

12 Q. What consumer products?

13 A. In my EPA study, we asked people to assess
14 the risks associated with, I believe, toilet bowl
15 cleaner and pesticides.

16 Q. Are you familiar with the Mayo
17 Foundation's Nicotine Dependent Center patient
18 questionnaire?

19 A. No.

20 Q. Have you ever seen it?

21 A. If I saw it, it was in passing in the
22 literature, but I don't recall having seen it.

23 Q. In your questionnaire that you use,
24 how many pages is it?

25 A. It depends on how you print it out. It's

1 printed in my book, and I could pick up the book,
2 and we could look at it.

3 Q. Why don't we do that.

4 A. Why don't I use the official exhibit. It
5 goes from Pages 153 to 155, but there's
6 information pertaining to how things could be
7 coded through to 157.

8 (Interruption)

9 MR. BECNEL: Can we go off a
10 second.

11 THE VIDEOGRAPHER: The time is
12 4:28, and we are going off the record.

13 (Discussion off the record)

14 THE VIDEOGRAPHER: The time is
15 4:36, and we are back on the record.

16 BY MR. BECNEL:

17 Q. Can you tell me, sir, in terms of
18 your study that you did, did you get the data
19 yourself, or did you have someone else gather it
20 for you?

21 A. Which study?

22 Q. The ones that you're basing your
23 opinion on, meaning your book and the industry
24 study that you used as well as the second study
25 that you did yourself.

1 MR. WEIL: Objection to the form of
2 the question.

3 A. There are only three original surveys that
4 I've analyzed --

5 Q. Okay. Why don't we start out --

6 A. -- on risk perceptions.

7 Q. Okay. Let's start out and do them
8 one at a time. I don't want to compound or make
9 it difficult. Let's start out, what is the first
10 one you reviewed?

11 A. Well, not counting reviewing other studies
12 in the literature which I've reviewed, the first
13 data set is the Audits & Surveys data for 1985.

14 Q. And you used that, and that's part
15 of this report?

16 A. That was part of my analysis in my book,
17 and I drew upon it for this report, yes.

18 Q. Okay. What other one did you use?

19 A. I ran a telephone survey in Durham, North
20 Carolina, on smoking risk perceptions, and that's
21 also discussed in this report.

22 Q. Is that in your book, the survey
23 form that you used that you just referred to when
24 we broke?

25 A. No. That was the Audits & Surveys survey

1 form, but in the text of my book, I give my survey
2 questions, my key survey questions.

3 Q. How many questions were there?
4 You're welcome to use the book if you need to
5 refresh your memory.

6 A. Well, I'm not sure of the count. If you
7 exclude personal characteristic questions and
8 questions about smoking status, there were two
9 risk questions, three counting life expectancy.

10 Q. And you're on page what?

11 A. Page 153.

12 Q. Did you design this study --

13 A. No

14 Q. -- called "Survey"?

15 A. I was talking about my survey. This is the
16 other survey.

17 Q. Okay. Yours, how many questions on
18 yours?

19 A. I don't know. It's not printed in here,
20 but essentially it was patterned after this one
21 except I eliminated some of the introductory
22 questions like "Do you know or have you heard
23 smoking shortens a person's life?" I did not ask
24 those questions. Instead, I asked about lung
25 cancer mortality, overall mortality and life

1 expectancy loss.

2 Q. In terms of what you did, what
3 tables did you use in terms of the Department of
4 Labor tables statistical data in connection with
5 your results?

6 A. I'm not sure I used any Labor Department
7 tables.

8 Q. What tables did you use? What life
9 tables did you use?

10 A. Vital statistics of the United States.

11 Q. What year?

12 A. I don't recall.

13 Q. Well, when was this study done?

14 A. It says in the book I believe around '90 or
15 '91.

16 Q. All right. How many people did you
17 survey?

18 A. A couple hundred. The exact number is in
19 the book.

20 Q. But you don't independently recall?

21 A. 206.

22 Q. All right. Who did the telephone
23 survey?

24 A. A graduate student at Duke.

25 Q. Had he ever done that before?

1 A. I don't know.

2 Q. He wasn't a professional surveying
3 company?

4 A. No. I've worked with professional survey
5 companies, and he's much more competent than the
6 typical person who would make a phone call. He's
7 articulate.

8 Q. Had you ever designed a study like
9 this before?

10 A. Yes. I've been doing surveys in the field
11 for EPA on a continuous basis since 1984, and I
12 still am.

13 Q. Who participates with you in
14 designing the questions so that they are bias
15 neutral, race neutral and the like?

16 A. We don't have an affirmative action
17 overseer in any sense, but often these are joint
18 research projects with other professors.
19 Sometimes they're not, but most of them have been
20 joint research projects involving a large number -
21 of people.

22 Q. Do you do a protocol before you
23 define what and how you're going to go about it?
24 Was there a written protocol?

25 A. Generally EPA just turns us loose.

1 Q. So there was no written protocol?

2 A. We design draft survey instruments that we
3 pre-test exploring different kinds of questions.

4 Sometimes it may be done with respect to the EPA
5 survey.

6 Q. Was it done in this case?

7 A. No.

8 Q. What --

9 A. Let me correct that. We do report on some
10 other questions, which is that we did try absolute
11 numbers. We asked people in terms of absolute
12 numbers of deaths instead of percents, and people
13 simply responded in terms of percents, so we
14 dropped that approach.

15 Q. Were you aware of about how many
16 people you used in terms of how many people were
17 dying a year? Did you do that?

18 A. No. We asked relative to the population of
19 North Carolina or the number of smokers in North
20 Carolina how many would die because they smoke.

21 Q. How many people in the population
22 of North Carolina at the time the study was done?

23 A. My guess is 10 million.

24 Q. And how many people of that
25 population smoked?

1 A. I don't recall.

2 Q. Do you know how many people of that
3 population said they tried to quit smoking?

4 A. I don't recall that either.

5 Q. Do you know any of the demographics
6 of the people population in that state?

7 A. I've published studies indicating
8 demographic profiles of samples I've drawn in
9 North Carolina.

10 Q. Was this a statistical study that
11 you used a computer generated selection process so
12 that it would be race neutral, bias neutral and
13 the like?

14 A. No, it was not a computer generated study.

15 Q. How did you make the selection of
16 who you were going to ask questions of?

17 A. This was random calls out of phone
18 listings.

19 Q. So you took a phone book, put it in
20 front of somebody and said "Call every 50th person
21 or every 100th person"? That's how you did it?

22 A. We had a specified procedure. I don't
23 recall whether it was every 50th or every 100th.

24 Q. Whatever the procedure was, whether
25 it was followed or not followed, it was up to this

1 graduate student that was doing it?

2 A. I was not there when the graduate student
3 made the calls.

4 Q. So you can't tell this court
5 whether or not he did it correctly or incorrectly,
6 can you?

7 A. He indicated that he followed the procedure
8 of getting them randomly.

9 Q. I didn't ask you that question.
10 You can't tell the court in this case whether he
11 did it correctly or he didn't do it correctly, can
12 you?

13 A. I don't know whether he was lying.

14 Q. Because you didn't see him, and you
15 don't know what he did?

16 A. That's correct.

17 Q. You told him what to do, and you
18 assume he may have done it, but you can assume
19 just as easily that he may not have done it?

20 MR. WEIL: Objection.

21 A. No. There's no reason for him to lie to me
22 about how he made the calls.

23 Q. Did you keep -- this was a
24 telephone survey. How were the records kept?

25 A. They were written, so we had written

1 records of every phone call.

2 Q. What happened to those written
3 records?

4 A. They were kept, and they were coded up.

5 Q. Who coded them?

6 A. A computer programmer.

7 Q. Did you watch them code them up?

8 A. No, but this was independently verified by
9 another graduate student going from the computer
10 coding to the written record.

11 Q. And then you kept that data or
12 destroyed the data?

13 A. I kept it. I'm not sure if I still have
14 it, but at the time I kept it.

15 Q. So you had 206 questionnaires, if
16 that's the number that we agreed to in your book?

17 A. That's correct.

18 Q. And somebody coded them?

19 A. Yes.

20 Q. How many hangup calls did you get?

21 A. I don't recall.

22 Q. How many calls refused to answer?

23 A. I don't recall.

24 Q. How many calls said, "I'll answer
25 some questions and not others"?

1 A. I don't think that was a large number, and
2 if it was, we coded it up that way, but I don't
3 recall it being a big number.

4 Q. How many total calls were made to
5 get the 206?

6 A. I don't recall the count.

7 Q. Do you have any information as to
8 the count?

9 A. All I know is that he reported that it was
10 easy, fairly easy to do. It was not like a low
11 hit rate.

12 Q. But he reported that. You didn't
13 do that, did you?

14 A. That's correct, but his incentive would not
15 be to tell me it's easy if it's hard.

16 Q. Did you do a sample or an audit
17 survey yourself to verify what was projected and
18 what was expected, and what you were finding on a
19 randomized basis?

20 A. What I did do was compare the responses of
21 this survey with the Audits & Surveys national
22 survey, and they tracked fairly well.

23 Q. Have you done retrospective studies
24 before?

25 A. Retrospective studies of what?

51954 0113

1 Q. Of the type of data you were trying
2 to collect.

3 A. What would such a retrospective study be?

4 Q. I'm asking you. Have you done
5 retrospective studies before of the type of data
6 you tried to collect?

7 A. If you're saying have I done comparisons of
8 results across studies for consistency to see if
9 they parallel other studies, I've done that.

10 Q. Did you do it in this case?

11 A. We did. We looked at how the lung cancer
12 risk perceptions compared with the national study.

13 Q. Did you check their questions to
14 your questions to see how they paralleled or how
15 they differed?

16 A. I wrote them taking that into account.

17 Q. I didn't ask you that question.
18 Did you compare their questions to your questions
19 to see how they compared?

20 A. I answered that. That's how I wrote the
21 question, by comparing them. I used their
22 question, which I altered to see whether their
23 wording would alter the response, so I replaced
24 "getting lung cancer" by "lung cancer mortality."

25 Q. The information you were trying to

1 gather was the knowledge of the health effects of
2 smoking by the population that you were surveying,
3 is that correct, in North Carolina?

4 A. Their assessment of the health risks.

5 Q. Did you use all portions of the
6 state?

7 A. No. It was local. It was only to do --

8 Q. It was local where?

9 A. The Durham, North Carolina; Chapel Hill,
10 North Carolina, Raleigh, North Carolina calling
11 district.

12 Q. And the Durham, North Carolina,
13 calling district contains a disproportional number
14 of college students, does it not?

15 MR. WEIL: Objection.

16 A. College students don't appear in the phone
17 book.

18 Q. Now you don't know that, do you,
19 Doctor?

20 A. In general, because you show up in the
21 fall, and you're not listed until the following
22 year and your number changes. I do know that. I
23 call college students, and they're generally not
24 in the phone book. They come and go every year.

25 Q. Are you telling me that college

1 students don't get phones and don't get listed in
2 the phone book, whether it's current year or next
3 year?

4 A. If they list you, a Duke student next year,
5 you'll typically have a different form because
6 your dorm room moves.

7 Q. But you'll be listed?

8 A. No. You lose your number in May when you
9 leave. June, July and August you're gone. You
10 get back in September. You get a new number.

11 Q. When are phone books published?

12 A. I don't recall.

13 Q. Are you aware that the phone books
14 are mostly published between September and October
15 and become effective in January?

16 A. We ran our survey largely in the summertime
17 when there were no students.

18 Q. So you discounted the student
19 population in the Chapel Hill area; is that
20 correct?

21 A. I didn't discount them.

22 MS. JOHNSON: I object to the form
23 of the question.

24 Q. How many students in the Chapel
25 Hill area, Duke University?

1 A. I don't have the count.

2 MS. JOHNSON: I object to the form
3 of that question, too.

4 Q. Well, roughly how big of a
5 school --

6 MR. WEIL: Do you mean Chapel Hill
7 or Durham?

8 MR. BECNEL: Both.

9 MS. JOHNSON: Different schools and
10 different --

11 Q. How many different colleges in
12 Chapel Hill, Durham?

13 A. One in each. One major school.

14 Q. How many students in each location?

15 A. I don't know the count.

16 Q. Approximately?

17 A. I still don't know. Thousands.

18 Q. Duke has over 30-something
19 thousands students, don't they?

20 A. I haven't had any occasion to count them. .
21 I'm not sure who you're counting.

22 Q. How many people in the Durham area
23 as opposed to the Chapel Hill area?

24 MS. JOHNSON: I object to the form
25 of the question.

1 A. I don't know how many people live in
2 Durham. More people live in Durham than Chapel
3 Hill.

4 Q. How many African Americans in each
5 location?

6 A. There are a lot of African Americans. I
7 don't know the number.

8 Q. How many Hispanics are in each
9 location?

10 A. Not as large a number.

11 Q. What is the breakdown of mail to
12 female ratio between the two?

13 A. I would guess it's fairly even, that Durham
14 has roughly an even number of males and females.

15 Q. What is the percentage of people
16 highly educated as opposed to not so highly
17 educated, meaning high school and below?

18 A. I don't know the exact percentages.

19 Q. What percentage in your survey,
20 sir, said that cigarette smoke was harmful of the.
21 206 people?

22 A. I'm not sure I asked that question. I
23 don't recall asking it.

24 Q. What percentage of non-smokers said
25 cigarette smoking was harmful?

1 A. Once again, I don't believe I asked that
2 question.

3 Q. Are you aware that there are many
4 studies that ask that very question with
5 statistical data on each?

6 A. Statistical data with respect to an
7 uncertain and undefined reference point.

8 Q. In 1991 Rachlin did a study dealing
9 with those exact things, did he not?

10 A. I've seen a number of studies with respect
11 to qualitative reference points such as that.

12 Q. Have you seen the Rachlin study?

13 MR. BACNEL: That's R-a-c-h-l-i-n.

14 A. Yes, I believe I have.

15 Q. You were trying to find out about
16 lung cancer, were you not?

17 A. No, I was doing overall smoking mortality
18 risks, and I also did a sensitivity test on lung
19 cancer and life expectancy, so I was doing all
20 three.

21 Q. Did the smokers discount their risk
22 of a habit in the survey that you did?

23 MR. WEIL: Objection. Vague and
24 ambiguous.

25 A. I had no evidence that they discounted it.

1 Q. Are you aware that the CDC in 1991
2 did that very survey and found that smokers
3 discounted the risk of their habit in surveys in
4 the general population as insensitive to the
5 uniquely high level of risk associated with
6 smoking? Are you aware of that?

7 MR. WEIL: Objection. Assumes
8 facts not in evidence.

9 A. I'm not aware of that, and it's certainly
10 not true for the data I've analyzed.

11 Q. Did you attempt to estimate the
12 number of people -- the mortality of the people in
13 Chapel Hill or Durham who were dying from
14 cigarette smoking?

15 A. No.

16 Q. Did you attempt to find out when
17 they began smoking?

18 A. No.

19 Q. Do you know what year most people
20 begin smoking?

21 A. No.

22 Q. Do you have any information of
23 whether they do it at 15 and above or 15 and
24 below?

25 A. I don't know the answer to that, and I also

1 don't know what you mean by "begin smoking" in the
2 sense that having one cigarette is not necessarily
3 beginning smoking.

4 Q. Well, cigarette smoking goes
5 through four phases, does it not?

6 MR. WEIL: Objection.

7 A. I don't know how people have characterized
8 it. I mean, there are lots of ways you can
9 characterize it.

10 Q. In terms of teenagers or young
11 people, are you familiar with teen smoking?

12 MR. WEIL: Objection. Vague and
13 ambiguous. Overbroad.

14 A. I don't know what that includes.

15 Q. Have you ever looked at the
16 University of Michigan's Institute for Social
17 Research and the studies that they did between '89
18 and '92 with high school seniors?

19 A. No.

20 Q. Do you know what percentage smoked-
21 as to what percentage didn't smoke?

22 A. No.

23 Q. Are you aware that, by age 12, the
24 CDC found in 1992 that 10 percent of youth already
25 smoke?

1 A. No, I've not seen that study.

2 Q. By age 15, that study shows that it
3 increased to about 30 percent. Were you aware of
4 that?

5 MR. WEIL: Objection.

6 A. The same problem, and also, I still don't
7 know what your definition of smoking is.

8 Q. And by age 18, it reached 40
9 percent, meaning 10 or more cigarettes.

10 MR. WEIL: Objection.

11 A. Same response.

12 Q. Did you compare your data in your
13 survey to the CDC study in 1992?

14 A. No.

15 Q. Were you aware that approximately
16 one quarter of high school seniors reported that
17 they started smoking before Grade 6?

18 MR. WEIL: Objection.

19 A. No, and once again, I don't know what they
20 mean by "reported started smoking."

21 Q. Do you know what the ethnic
22 difference is in the initiation of smoking among
23 youth?

24 A. I've not looked at different ethnic groups.

25 Q. You didn't look at ethnic groups in

1 your study either?

2 A. In the first two studies, no. In the third
3 study, we have detailed ethnicity information.

4 Q. Did you use high school students at
5 all in your study?

6 A. 16- to 19-year-olds would presumably
7 include high school students.

8 Q. When using -- and how did you
9 determine whether they were in high school or they
10 had quit high school?

11 A. In those studies, I didn't. Subsequently,
12 I have a study in which I have information about
13 the level of education, but that's -- we don't
14 start the Audits & Surveys study at 16. I believe
15 it starts at 18.

16 Q. Are you aware, sir, that over 30
17 percent of African Americans drop out of school?

18 MR. WEIL: Objection.

19 A. I don't know what the exact percentage is.

20 Q. Did you try to adjust your study to
21 reflect that fact?

22 MR. WEIL: Objection.

23 A. My third analysis controls for both race
24 and education.

25 Q. Did you take into consideration,

1 since you were in a major college town doing your
2 survey, that daily prevalence of smoking among
3 those without college plans differ three times for
4 that of those with college plans, meaning that
5 they're going to go to college?

6 MR. WEIL: Objection.

7 A. No. I did not target my survey differently
8 based on college plans.

9 Q. Are you aware of the difference?

10 A. That people without college plans are more
11 likely to smoke?

12 Q. That's correct, 30 percent versus
13 14 percent. Were you aware of that?

14 A. I'm not aware of the exact number.

15 Q. Did you ever look at the WHO study,
16 that's W-H-O -- a cross national study of children
17 from all of the various countries?

18 A. I may have seen a reference to it, but I
19 don't think I've read the original study.

20 Q. Does social climbing play any role-
21 in youth smoking?

22 A. What do you mean by "social climbing"?

23 Q. Meaning having negative or
24 affirmative consequences by peer groups.

25 A. Conceivably it could. This is not

1 something I've examined.

2 Q. Were you aware that Henningfield,
3 Clayton and Pollen did a study on that?

4 MR. WEIL: Objection.

5 A. No.

6 Q. Do you realize that Jessor,
7 J-e-s-s-o-r did a study on that?

8 MR. WEIL: Objection.

9 A. Once again, I may have encountered some of
10 these studies. I don't recall them by name.

11 Q. Are you aware that the U.S.
12 Department of Health and Human Services did a
13 study in 1986 and 1989 on that?

14 MR. WEIL: Objection. This is also
15 beyond the scope of his report.

16 A. If it's in the Surgeon General's reports or
17 referred to there, I would have come across it at
18 some point.

19 Q. Are you aware that the Surgeon
20 General's report in 1989 reported that one quarter
21 or more of all regular smokers will eventually die
22 of smoking-related diseases with an average loss
23 of 21 years of life per person?

24 A. I don't recall the exact numbers.

25 Q. Do you agree with that or do you

1 disagree with that?

2 MR. WEIL: Objection.

3 A. I've seen different statistics out of
4 surgeon generals' reports that put the risk
5 differently.

6 Q. Well, what do you consider the risk
7 to be of people who smoke beginning at age 12 to
8 15 and eventually die?

9 A. You cited the Surgeon General saying it's
10 25 percent. That number would be within the range
11 I have estimated based on the Surgeon General's
12 statistics. As of 1991, my range was 18 percent
13 to 36 percent, so 25 percent is almost right in
14 the middle of the range.

15 Q. All right. Are you familiar with
16 youth smoking which is called the preparatory
17 stage, which covers thinking about it, talking
18 about it before you actually start? Are you
19 familiar with that term --

20 MR. WEIL: Objection.

21 Q. -- in teen smoking?

22 A. No, I've never seen that literature.

23 Q. The second stage would be initial
24 trying. Have you ever heard of that?

25 MR. WEIL: Objection.

1 A. Not within the context of any particular
2 literature.

3 Q. The third stage would be
4 experimentation. Have you ever heard of that?

5 MR. WEIL: Objection.

6 A. Same answer.

7 Q. And then the fourth stage would be
8 regularly used. Have you heard of that?

9 MR. WEIL: Objection.

10 A. You just told me. Other than that, I've
11 never heard it.

12 Q. And the fifth stage would be
13 nicotine dependence, and that's from a 1984 study
14 and a 1988 study by the United States Department
15 of Health and human services.

16 MR. WEIL: Objection.

17 Q. You've never heard of those five
18 stages --

19 A. No, I haven't.

20 Q. -- in youth smoking?

21 A. And I don't think they're particularly
22 meaningful.

23 Q. Is dependence characterized by
24 three critical factors, sir: Tolerance, the
25 experience of unpleasant psychological sensations

1 or withdrawal and high probability of resuming use
2 that happens to individuals who try to quit?

3 MR. WEIL: Objection. I instruct
4 the witness not to answer.

5 Q. Is it not a fact from the studies
6 that you've reviewed that about a third of adult
7 nicotine users are addicted before they get out of
8 high school?

9 MR. WEIL: Objection. Instruct the
10 witness not to answer.

11 Q. Are you aware of whether social
12 disorganization in a family precipitates one to
13 begin smoking or not?

14 MR. WEIL: Objection. I instruct
15 the witness not to answer.

16 Q. Do you know what the predictors of
17 whether a person will begin smoking or not are?

18 MR. WEIL: Objection. I instruct
19 the witness not to answer.

20 Q. Are you going to render an opinion,
21 sir, in this case concerning cessation of smoking?

22 MR. WEIL: Directly on that point?

23 MR. BECNEL: Directly on that
24 point.

25 MR. WEIL: I'm going to object as

1 vague and ambiguous.

2 Q. You can answer.

3 A. Cessation may come up, but it's not the
4 focal point of my report.

5 Q. Do you smoke, sir?

6 A. No.

7 Q. Have you ever smoked?

8 A. A pipe, but never smoked cigarettes,
9 although I tried one once but did not inhale.

10 MR. VERNON: That sounds familiar.

11 THE WITNESS: It's a presidential
12 answer.

13 MR. BECNEL: My buddy James
14 Carville told you that one.

15 Q. Can you tell me, sir, how old were
16 you when you first attempted to smoke?

17 MR. WEIL: Objection. I instruct
18 the witness not to answer.

19 Q. Does anybody in your family smoke?

20 MR. WEIL: Objection. I instruct -
21 the witness not to answer.

22 Q. Has anyone in your family had
23 health-related problems related to smoking?

24 A. None that I know of.

25 Q. Do you have any children?

1 A. Yes.

2 Q. How many?

3 A. Two.

4 Q. Do they smoke?

5 A. I don't know whether they've tried
6 cigarettes, but to the best of my knowledge,
7 they're not what I would call regular smokers.

8 Q. Well, do they or do they not smoke,
9 to your knowledge?

10 A. I don't live with them, and they don't
11 visit me here, so the best answer is that I don't
12 know.

13 Q. And you don't know whether they
14 tell the truth or don't tell the truth, do you?

15 MR. WEIL: Objection. I instruct
16 the witness not to answer.

17 Q. Are you aware, sir, that if we were
18 to take, just for example, an article out of USA
19 Today, today's issue, dealing with cigarette
20 smoking that it's the consensus of the negotiators
21 in the Congress and within the industry that youth
22 don't tell the truth about smoking? Are you aware
23 of that?

24 MR. WEIL: Objection. I instruct
25 the witness not to answer.

1 Q. Do you know what percentage of
2 people in the smoking population attempt to quit
3 smoking each year?

MR. WEIL: Objection.

4 A. I don't recall the exact percentage. I
5 know a lot of them say they attempt to quit, but
6 I'm not sure what that entails.

7 Q. Are you aware that Johnson and
8 O'Malley and Bachman, B-a-c-h-m-a-n, made studies
9 on that?
10

MR. WEIL: Objection.

11 A. I know a number of people have made
12 studies. I don't recall the particular authors.

13 Q. Are you aware that youth make
14 frequent and unsuccessful attempts to quit smoking
15 and that over half of the US smoking youth attempt
16 to quit each year, but less than 1/5 of the youth
17 actually quit?
18

MR. WEIL: Objection.

19 A. I haven't seen that study or those
20 statistics.
21

22 Q. Are you familiar with the study by
23 Carlton, Melia, M-e-l-i-a, and Moyer in 1990?

MR. WEIL: About?

MR. BECNEL: About smoking and

1 cessation, trying to stop and are successful.

2 A. I don't believe I recall seeing that study.

3 Q. Are you aware that, under that
4 study, only 5 percent of youth smoking today
5 believe that they will be still smoking five years
6 from now when, in fact, over 75 percent of them
7 continue to smoke after the five-year period?

8 MR. WEIL: Objection.

9 A. I don't recall the exact statistics for
10 that.

11 Q. What are the major reasons that
12 prohibit youth from stopping smoking?

13 MR. WEIL: Objection. I instruct
14 the witness not to answer.

15 Q. Do the social pressure, urges,
16 withdrawal symptoms in the United States
17 Department of Health and Human Services study by
18 the Attorney General play a role in the cessation
19 of smoking or attempted cessation of smoking by
20 various portions of the population?

21 MR. WEIL: Objection. I instruct
22 the witness not to answer.

23 Q. Do you know what the withdrawal
24 symptoms or the relapse rates are of people who
25 attempt to stop smoking?

1 MR. WEIL: Which question are you
2 asking, because I think they're different?

3 MR. BECNEL: Well, let's break them
4 down.

5 Q. Do you know, sir, in terms of
6 withdrawal symptoms, how many people who report
7 trying to stop smoking have those kinds of
8 problems?

9 MR. WEIL: Objection. I instruct
10 the witness not to answer.

11 Q. Do you know in terms of high
12 relapse rates what percentage of the people of 18
13 or over have relapses?

14 MR. WEIL: Objection.
15 A. No, because we don't know how to judge
16 whether they truly tried to quit, so it's
17 difficult to assess relapsing.

18 Q. In the area that you were calling
19 from, sir, were you not concerned that
20 representatives of national sentiment in terms of
21 the area you were in since it was a high area for
22 the growing of tobacco, a high area for the
23 production of tobacco products, that you might
24 have a skewed result?

25 A. I did not think this was a national random

1 sample. By the same token, a half an hour ago you
2 were intimating that it was a sample filled with
3 people who would be alert to risks of smoking.

4 Now you're suggesting it's a sample that has the
5 opposite properties. I think if you look at the
6 Durham, North Carolina, area, you'll find that
7 it's not a town filled with tobacco farmers. This
8 is a southern industrial town.

9 Q. Are there any manufacturers there?

10 A. Yes. They have -- IBM has a plant there.
11 General Electric has a manufacturing plant there.
12 So there is manufacturing industry there as well
13 as a variety of high -- it's a high tech services
14 area as well.

15 Q. Any cigarette producing
16 manufacturers there?

17 A. I don't know if they were still active.
18 Liggett and Myers used to be there, but I believe
19 they have shut down their manufacturing operations
20 and have exited the area as of that time.

21 Q. How about wholesalers,
22 distributors, retailers?

23 MR. WEIL: Of cigarettes?

24 MR. BECNEL: Of cigarettes.

25 A. I don't know. I assume they have

1 wholesalers everywhere and distributors.

2 Q. Have you done any research on the
3 wholesalers, retailers, distributors of cigarettes
4 and the cigarette industry?

5 A. No, but in roughly a decade of living down
6 there, I never met one of them, so I assume
7 they're not on every street corner.

8 Q. Now, you said you used a bunch of
9 surveys and you referred to Roper Center surveys;
10 is that correct?

11 A. Gallup surveys and Roper surveys.

12 Q. Where did you get those from?

13 A. The Gallup surveys we got out of the
14 University of North Carolina labor library, which
15 I believe is the source where we got those, and
16 the Roper surveys were pulled off the web, so they
17 were computer generated.

18 Q. Did you pull them off the web?

19 A. No.

20 Q. Somebody else did?

21 A. That's correct.

22 Q. Who did?

23 A. Dr. Nichols perhaps aided by a computer
24 programmer.

25 Q. Who is Dr. Nichols?

1 A. Dr. Albert Nichols is a former Kennedy
2 School professor and economist who now works for
3 NERA.

4 Q. What is the opinion you intend to
5 give to the court in this case, sir?

6 A. Well, the most complete statement of the
7 opinion is my expert report, but in a nutshell,
8 the opinion is that the evidence I've seen
9 suggests that smokers are making rational
10 decisions in that they're informed of the risk.
11 If anything, they may overperceive the risks
12 associated with smoking. They're responsive to
13 prices in much the same manner as consumers are in
14 normal consumption contexts, and I've also shown
15 that smokers differ systematically from
16 non-smokers in terms of their attitude towards
17 risks so that they're more willing to work on
18 hazardous jobs, and my current research suggests
19 that, even within a hazardous job, they're more
20 likely to get injured, more likely to get injured.
21 at home so the evidence we have is consistent with
22 rational risk taking behavior.

23 Q. Do you think that more people who
24 are in industry without college educations are
25 more prone to be in industries that have high

1 injury rates?

2 A. Your educational background will affect the
3 types of jobs you have access to, and if you're
4 less well educated, you're more likely to be in a
5 blue collar job and those are riskier than white
6 collar jobs.

7 Q. Is there not association between
8 people from broken homes and risk taking?

9 A. I don't know. We control for household
10 structure, marital status, number of children,
11 other types of things. Typically, these surveys
12 don't have information on whether you came from a
13 broken home, so I've never seen studies of that.

14 Q. Do you have any studies concerning
15 that you've looked at on any reports concerning
16 when you only have one member, unwed mother type,
17 single adult raising multiple children?

18 MR. WEIL: Objection.

19 A. Our recent study does take into account
20 whether you're a female, unmarried, and we've also
21 looked at dependents and so on, so that would be
22 part of the sample as well, and we have detail
23 controls for all demographic background
24 characteristics.

25 Q. Is it true, sir, that the packages

1 that have warnings have developed over the years
2 depending on government regulations?

3 A. Government regulations have changed, and
4 they've mandated what warnings go on the
5 cigarettes.

6 Q. The warnings that go on the
7 cigarettes are designed by whom?

8 A. The U.S. Congress writes those warnings.

9 Q. And they describe the font and the
10 size and the color?

11 A. Everything is specified.

12 Q. Have you ever used those warnings
13 to reach any conclusions?

14 A. I've used those warnings in the context of
15 other risk analyses where I showed that, if you
16 adopt a wording similar to that of the 1965/1964
17 cigarette warning and were to put it on cereal,
18 for example, people would view that as a very
19 risky product, so the wording is something that
20 people take quite seriously.

21 Q. How long does it take one who
22 starts regular cigarette smoking, ten a day, to
23 get to be nicotine dependent?

24 MR. WEIL: Objection. I instruct
25 the witness not to answer.

1 Q. Does the determination of whether
2 you're nicotine dependent or not play any role in
3 whether you're able to quit or not?

4 MR. WEIL: Objection. I instruct
5 the witness not to answer.

6 Q. In terms of risk analysis, what
7 peer reviewed methodology did you use to determine
8 that smoking is a risky business?

9 A. What peer reviewed methodology did I use to
10 determine whether the true risks of smoking?

11 Q. Yes.

12 A. I took the fatality count generated by the
13 United States Surgeon General.

14 Q. What year?

15 A. It's in my book. I forget the year. Maybe
16 it's 1989, '91, somewhere in that time period.

17 Q. Well, why don't you look in the
18 book and tell us about what year how many people
19 died from cigarette smoking?

20 A. 300,000 deaths per year in 1988, then in
21 1989 it was 337,000 deaths per year, but the more
22 recent evidence that I used for 1991 is
23 \$434,000 -- 434,000 people.

24 Q. Where does that come from?

25 A. That was the Surgeon General -- the last

1 estimate was by the Surgeon General as cited in
2 the New York Times February 1, 1991, Page A-9.

3 Q. So you used a newspaper account to
4 get the data?

5 A. Well, the first two studies were not
6 newspaper accounts, but since the Surgeon General
7 had not issued a new report that I had in my hand
8 at the time and since I wanted to stay as current
9 as I could, I used the New York Times updating of
10 the Surgeon General's estimates. There was no
11 published report that I could hold in my hand that
12 day.

13 Q. Are you aware that the Center for
14 Disease Control and Prevention estimated that
15 smoking is responsible for 434,000 deaths each
16 year in the United States?

17 A. That's the number I just read.

18 Q. Yes. You are aware that they are
19 the ones that came up with that number?

20 A. Well, the Surgeon General doesn't do very
21 much original research. He simply blesses other
22 research.

23 Q. In terms of your opinion, sir, you
24 said you have reviewed, but you don't have with
25 you, some additional audits and surveys. That's

1 not in your report, is it?

2 A. The new report is cited in my expert
3 report, the new Audits & Surveys study is cited
4 here.

5 Q. Between now and the time you
6 testify, are you going to do any additional
7 research?

8 A. Yes. I'm analyzing that data not as we
9 speak, but it's in the process where I'm analyzing
10 it and writing papers using the data.

11 Q. Are you intending to change your
12 opinion from the four corners of this expert
13 report prior to your trial testimony?

14 A. I don't know what the data will tell me.
15 If the data tell me something that's different,
16 one way or another, then I will be guided by what
17 it indicates.

18 Q. Well, you are aware when this case
19 is going to trial?

20 A. People have talked about November.

21 Q. All right. How many hours do you
22 intend to do doing additional research and labor
23 related to your charge in this case?

24 A. Well, I'm not being reimbursed by anybody
25 for the work on the Audits & Surveys data. That

1 is independent academic work that I happen to be
2 doing with that data, so they are not paying me to
3 do this, nor is any other law firm affiliated with
4 the cigarette industry paying me, so I don't know
5 how many hours I'll be doing. These aren't
6 billable hours, and as for what I will do that
7 they commission, it depends on what they ask me to
8 do.

9 Q. Have you finished the work they've
10 asked you to do thus far? They've asked you to
11 write a report. You've written a report. Did
12 they ask you to do anything else?

13 A. No.

14 Q. Have they asked you to review any
15 additional documents?

16 A. There are some additional articles that I'm
17 still reviewing.

18 Q. Have you seen any of the other
19 expert reports in this case either from the
20 plaintiffs' side or the defense side?

21 A. No.

22 Q. Have you met with any other experts
23 in this case?

24 A. No.

25 Q. In terms of what you have done in

1 this case, sir, you are governed by a code of
2 ethics as an economist?

3 A. And as a law professor at Harvard.

4 Q. As a law professor at Harvard and
5 as an economist, what codes of ethics do you feel
6 obligated to follow?

7 MR. WEIL: As it relates to his
8 participation in this case?

9 MR. BECNEL: As it relates to
10 anything, just as a person first, then as it
11 relates to this case second.

12 A. The basic code I have with respect to
13 publication and testimony is the same, which is to
14 characterize the truth as I see it.

15 Q. Are you aware of the ABA Code of
16 Ethics?

17 A. No, because I'm not a lawyer.

18 Q. I understand, but are you aware of
19 it?

20 A. No. I hope that you have one, but I don't-
21 know what it is.

22 Q. The Harvard Law School is an ABA
23 approved facility, is it not?

24 A. Yes, it is.

25 Q. Do they require that professors and

1 others working as faculty follow the ABA Code of
2 Ethics?

3 MR. WEIL: Objection. Lack of
4 foundation.

5 A. I don't know. We have our own code. I'm
6 not sure where it came from. We have a big red
7 book code of ethics and rules.

8 Q. Since you have been doing work over
9 the years for the tobacco law firms that represent
10 the tobacco interests, have you put a disclosure
11 or a disclaimer in your book concerning that?

12 A. Yes.

13 Q. Would you show it to me.

14 A. Well, I don't call it a disclaimer since I
15 see no reason to disavow what I've done, but on
16 Pages Roman Numeral vi and vii of the book, in the
17 preface I discuss --

18 MR. BECNEL: I'm sorry. I can't
19 see where you are.

20 MR. WEIL: It's in the preface
21 there.

22 MR. BECNEL: I don't know if mine
23 is working like yours.

24 A. In these two pages, I discuss my past work.

25 Q. All right. In those two pages,

1 where do you --

2 MR. WEIL: That's past work up to
3 the time of the publication of the book obviously.

4 THE WITNESS: Up through '92.

5 Q. And you said as of that time, "My
6 only direct work for the cigarette industry has
7 been the assistance I gave to R.J. Reynolds with
8 respect to the design of a hazard warning for
9 Premier cigarettes."

10 A. That plus on Page vi, the previous page, I
11 talk about the advice I gave to Jones, Day on risk
12 perceptions and choice under uncertainty.

13 Q. So you did do some work for Jones,
14 Day also?

15 A. Yes.

16 Q. And what type of work did you do
17 for Jones, Day?

18 A. They asked me to share with them my
19 expertise in how people think about risk. I also
20 reviewed various depositions of experts and gave -
21 them comments on their opinions.

22 Q. As an economist and law professor,
23 have you been consulted yet by any of the law
24 firms who are potential target defendants for
25 conspiracy actions in reference to the cigarette

1 case?

2 MR. WEIL: Objection. Assumes
3 facts not in evidence. Lack of foundation.
4 Speculative.

5 Q. You can answer.

6 A. All I know is that I've been contacted by
7 law firms involved in the Medicaid suits, and I'm
8 not -- I have not read in detail the specific
9 complaints against them in any of the states other
10 than Minnesota where I just glanced at it.

11 Q. When you worked for Jones, Day,
12 what was your job?

13 A. When?

14 Q. Whenever you worked for them.

15 A. Well, I'm continuing to work for Jones, Day
16 and Arnold & Porter now on the Medicaid cases.

17 Q. Which Medicaid cases?

18 A. Mississippi, Florida, Texas.

19 Q. Mississippi is over.

20 A. I worked on it when it was not over.

21 Q. Okay. Since it's over, have you
22 done any work since?

23 A. They usually don't let people work after
24 the case is over, so I've done nothing on
25 Mississippi.

1 Q. What other cases? Minnesota?

2 A. Minnesota is still alive. Texas is still
3 alive. Florida's dead.

4 Q. You worked for the Florida case, in
5 the Florida case?

6 A. Yes, but that's over.

7 Q. But you worked for Jones, Day and
8 Arnold & Porter?

9 A. Jones, Day. I worked with lawyers from
10 both firms, but I was reimbursed by Jones, Day.

11 Q. All right. Who got reimbursed?
12 You personally?

13 A. I was personally reimbursed.

14 Q. And how much did you earn from
15 doing work in the Mississippi and in Florida
16 litigation?

17 A. I don't recall.

18 Q. Approximately?

19 A. I don't even remember approximately. It
20 was several days, but I don't know how many in
21 each.

22 Q. How many hours did you work in the
23 Mississippi action would you say?

24 A. I don't know that either, but specifically
25 related to Mississippi, probably not very much.

1 Maybe a day of prep, one day deposition. It's not
2 a lot of hours.

3 Q. Was your deposition ever taken in
4 that case?

5 A. Yes, it was.

6 Q. Who took it?

7 A. Lawyers representing the State of
8 Mississippi. I don't recall their names.

9 Q. Don Barrett?

10 A. I wouldn't know them even if I heard them.

11 Q. Ron Motley?

12 A. I don't know.

13 Q. Where was it taken?

14 A. Here in Boston at Hotel Sonesta.

15 Q. How long did your deposition last?

16 A. A day.

17 Q. Did Michael Moore participate?

18 A. No, he did not make the trip.

19 MR. BECNEL: It's 5:30.

20 MR. VERNON: When was that? When
21 was it?

22 Q. When was that deposition taken?

23 A. This year within a month or so before they
24 settled, I think somewhere in there.

25 MR. BECNEL: Since we agreed to let

1 the court reporters go home for the evening, we
2 will terminate the deposition and rejoin you in
3 the morning.

4 MR. WEIL: You're a man true to
5 your word.

6 THE WITNESS: What time might this
7 morning be?

8 MR. WEIL: You can go off the
9 record.

10 THE VIDEOGRAPHER: The time is
11 5:30, and we are off the record. This is the end
12 of Cassette No. 2.

13 (Whereupon the deposition was
14 adjourned at 5:30 p.m.)

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1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3 I, Lisa A. Miller, Registered Professional
4 Reporter and Notary Public in and for the
5 Commonwealth of Massachusetts, do hereby certify
6 that there came before me on the 24th day of Sept.
7 1997, at 1:52 p.m., the person hereinbefore named,
8 who was by me duly sworn to testify to the truth
9 and nothing but the truth of his knowledge
10 touching and concerning the matters in controversy
11 in this cause; that he was thereupon examined upon
12 his oath, and his examination reduced to type-
13 writing under my direction; and that the
14 deposition is a true record of the testimony given
15 by the witness.

16 I further certify that I am neither
17 attorney or counsel for, nor related to or
18 employed by, any attorney or counsel employed by
19 the parties hereto or financially interested in
20 the action.

21 In witness whereof, I have hereunto set my
22 hand and affixed my notarial seal this 25th day of
23 September, 1997.

24 
25 Notary Public My commission expires 04/07/00